

Decision required under the Overseas Investment Act 2005: Waste Management NZ Limited

Date	7 August 2018
Security Level	Commercial: In Confidence
Priority	High
Report/Case Number	1421 / 201720096
Decision Required By	10 September 2018

Instructions

	Action Sought	Suggested Deadline
Minister for Land Information	1. Sign the attached memorandum 2. Forward the memorandum and annexure to the Associate Minister of Finance	29 August 2018
Associate Minister of Finance	1. Sign the attached memorandum 2. Forward the memorandum and annexure to the Overseas Investment Office	29 August 2018

Contact for Telephone Discussion

Name	Position	Telephone (wk)	Cellphone	First Contact
[s 9(2)(a)]	Acting Manager Applications	[s 9(2)(a)]		✓
	Solicitor			

Executive Summary:

1. Waste Management NZ Limited ("**Applicant**") has applied for consent to acquire the following adjoining land:
 - (a) Approximately 363.5567 hectares of land known as Springhill Farm, Wellsford; and
 - (b) Approximately 656.9413 hectares of land at Matariki Forests, Wellsford.
2. The Applicant intends to purchase the land for the purpose of developing a landfill to service the North Auckland region ("**Investment**").
3. The Applicant intends the Investment to replace the existing Redvale landfill in North Auckland which is due to reach capacity by 2026.
4. **We recommend that consent is granted to the Investment.**

Applicant

5. The Applicant is one of New Zealand's largest recycling and waste service companies, servicing industrial, government, and commercial customers.
6. The Applicant's ultimate majority shareholder is the State-owned Assets Supervision and Administration Commission of the Beijing Municipality being a state owned enterprise of the Chinese government.
7. Parent entities of the Applicant are also listed on the Shanghai Stock Exchange and the Hong Kong Stock Exchange.

Benefit to New Zealand

8. We consider that the Investment is likely to result in benefit to New Zealand. The construction of a landfill on the land is likely result in:
 - (a) The creation of jobs to construct and develop the landfill;
 - (b) The retention of jobs being staff at the Applicant's Redvale landfill who will be transferred to the new landfill once Redvale Landfill reaches capacity;
 - (c) Enhanced domestic services being the provision of a landfill facility to service North and West Auckland upon the existing landfill reaching capacity;
 - (d) Increased efficiency through the location of the landfill being closer to the waste source;
 - (e) Additional investment being introduced into New Zealand for the purpose of funding some of the construction of the landfill.
9. The Applicant has also agreed to provide some walking access on the land to the Sunnybrook Scenic Reserve and the Waiwhiu Stream. It is also intending to undertake some measures to ensure that areas of significant indigenous vegetation and habitats of indigenous fauna are protected from the effects of the proposed landfill.
10. The Applicant has other investments in landfills and related infrastructure in New Zealand which employs approximately 1,400 staff and provides waste disposal facilities.
11. The construction of the landfill is also likely to advance Auckland Council's strategies for waste management.
12. We consider that, when viewed collectively, the benefit to New Zealand that is likely to occur as a result of the construction of a landfill on the land is likely to be substantial and identifiable.

Good character

13. Our standard open background checks identified several matters requiring comment in relation to the individuals with control. However we do not consider that the matters prevent a finding that the individuals with control are of good character. Our assessment of the matters is further discussed in **Appendix 4**.

Instructions

14. Please see **Appendix 2** for instructions on how to make a decision and guidance on the relevant factors and criteria for consent.

Recommendations:

15. I recommend that you:

- (a) determine that:

- (i) the '**relevant overseas person**' is:-

- Waste Management NZ Limited; and
- Beijing Waste Management Capital NZ Limited.

- (ii) the '**individuals with control of the relevant overseas person**' are:

Individual	Role
Thomas Harvey Nickels	Directors of the Applicant
Hengjie Zhang	
Hans Evan Geoffrey Maehl	
Lishun Wu	Directors of Beijing Waste Management Capital NZ Limited
Guoxian Cao	
Bin Yang	
Meng Zhang	
Hengjie Zhang	
Graham David Mulligan	
Thomas Harvey Nickels	

- (iii) the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment; and
- (iv) the relevant overseas person has demonstrated financial commitment to the overseas investment; and
- (v) all the individuals with control of the relevant overseas person are, of good character; and
- (vi) each individual with control of the relevant overseas person is not, an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; and
- (vii) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
- (viii) the benefit will be, or is likely to be, substantial and identifiable; and

- (ix) the farm land or the securities to which the overseas investment relates have been offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations.
- (b) determine that you are satisfied that the criteria for consent in section 16 have been met; and
- (c) grant consent to the overseas investment in the form of the Proposed Decision in Appendix 1 and subject to the conditions set out in the Proposed Decision.

[s 9(2)(a)]

Acting Manager

Applications

Date 7/8/2018

Decision:

16. I am satisfied that the criteria for consent in section 16 have been met; and

<u>Associate Minister of Finance:</u>	<u>Minister for Land Information:</u>
Satisfied <input type="checkbox"/>	Satisfied <input checked="" type="checkbox"/>
Not Satisfied <input type="checkbox"/>	Not Satisfied <input type="checkbox"/>

17. Consent is granted to the overseas investment in the form of the Proposed Decision in Appendix 1 and subject to the conditions set out in the Proposed Decision.

<u>Associate Minister of Finance:</u>	<u>Minister for Land Information:</u>
Consent Granted <input type="checkbox"/>	Consent Granted <input checked="" type="checkbox"/>
Consent Declined <input type="checkbox"/>	Consent Declined <input type="checkbox"/>

Associate Minister of Finance

Date

E M Sage

Minister for Land Information

Date 31/8/2018

Good character

13. Our standard open background checks identified several matters requiring comment in relation to the individuals with control. However we do not consider that the matters prevent a finding that the individuals with control are of good character. Our assessment of the matters is further discussed in **Appendix 4**.

Instructions

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- (iii) the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment; and
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- (vi) each individual with control of the relevant overseas person is not, an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; and
- (vii) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
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- (ix) the farm land or the securities to which the overseas investment relates have been offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations.
- (b) determine that you are satisfied that the criteria for consent in section 16 have been met; and
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[s 9(2)(a)]
Acting Manager

Applications

Date 7/8/2018

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Not Satisfied <input type="checkbox"/>	Not Satisfied <input type="checkbox"/>

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<u>Associate Minister of Finance:</u>	<u>Minister for Land Information:</u>
Consent Granted <input checked="" type="checkbox"/>	Consent Granted <input type="checkbox"/>
Consent Declined <input type="checkbox"/>	Consent Declined <input type="checkbox"/>



Associate Minister of Finance

Date 11/9/18

Minister for Land Information

Date

Report of the Overseas Investment Office
on the application for consent by
Waste Management NZ Limited
Case: 201720096

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What is the Investment?

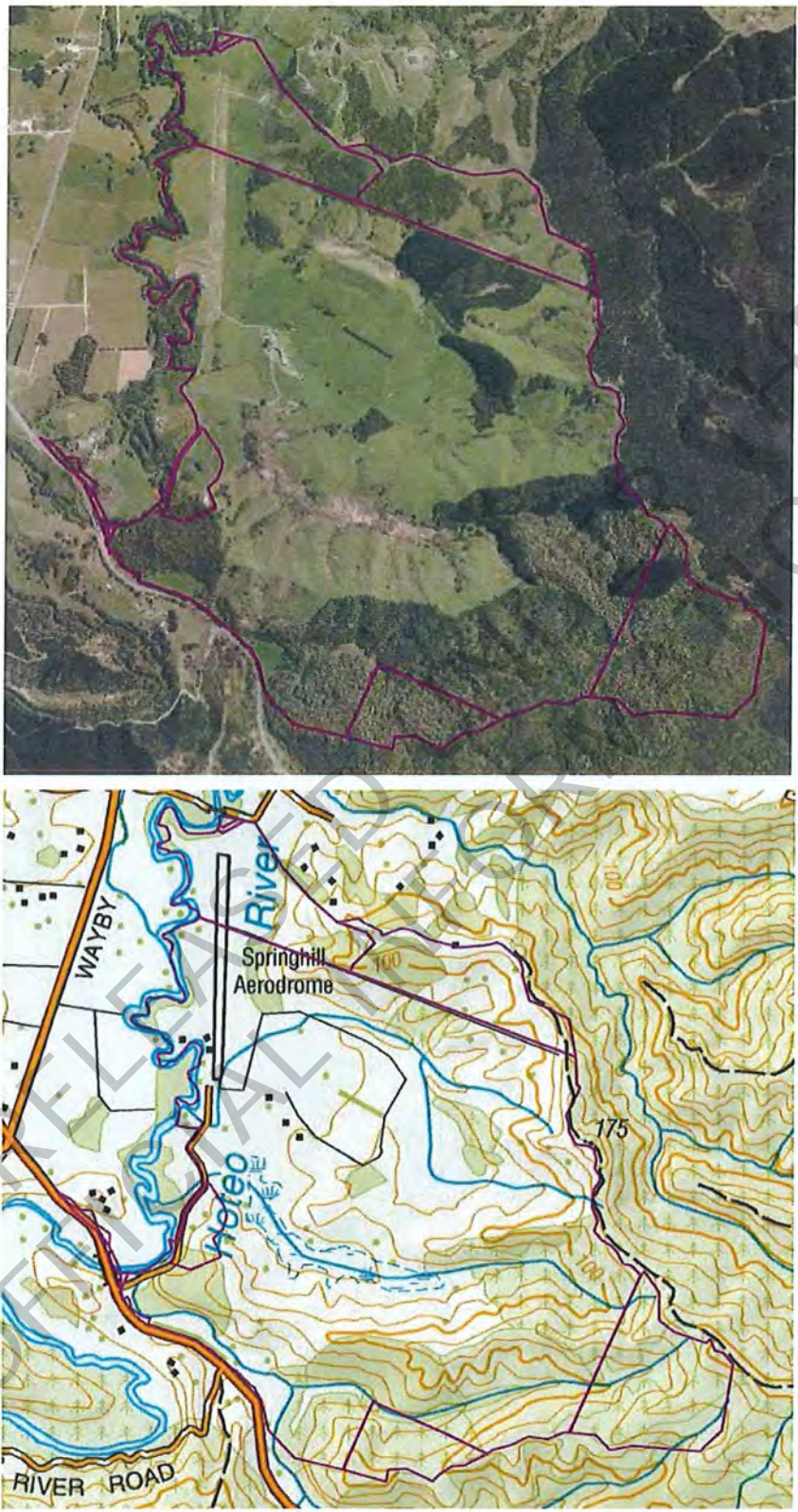
Applicant	Waste Management NZ Limited (China, People's Republic of 83.12%, Hong Kong 16.88%)
Vendors	Matariki Forests (United States of America 64.935%, United Kingdom 12.0295%, Luxembourg 10.136%, Various 8.577%, Sweden 2.5025%, Netherlands 1.82%) Springhill Estate Limited (New Zealand 100%)
Consideration	Springhill Land [s 9(2)(b)(ii)] Matariki Land [s 9(2)(b)(ii)]
Recommendation	Grant Consent

Description of the Investment

1. Waste Management NZ Limited ("**Applicant**") has applied for consent to acquire the following adjoining land:
 - (a) Approximately 363.5567 hectares of land known as Springhill Farm, Wellsford ("**Springhill Land**"); and
 - (b) Approximately 656.9413 hectares of land at Matariki Forests, Wellsford ("**Marariki Land**")
 (together the "**Land**")
2. The Applicant intends to purchase the Land for the purpose of developing a landfill to service the Auckland region ("**Investment**").

The Springhill Land

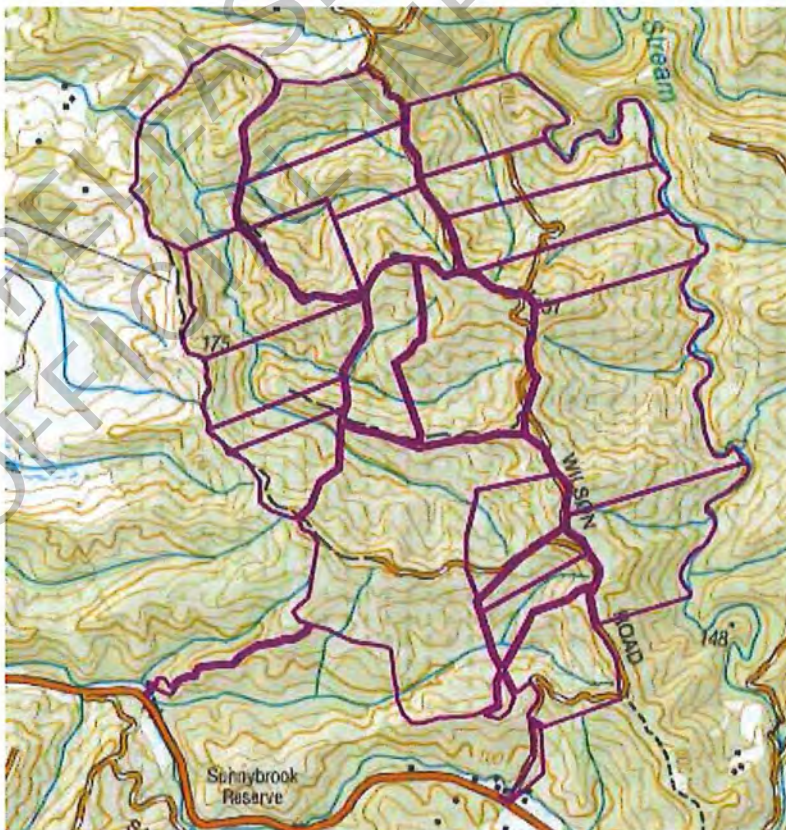
3. The Springhill Land is currently used as a large lifestyle property which comprises both native bush and pasture land upon which the current owner grazes sheep and operates a small scale private airfield.
4. There are some farm buildings located upon the Springhill land with the approximately 363 hectares being comprised as follows:
 - (a) approximately 188 hectares of pasture land;
 - (b) approximately 97 hectares of native bush;
 - (c) approximately 66 hectares of exotic forest; and
 - (d) approximately 12 hectares of wetlands.
5. A topography and aerial view of the Springhill Land can be illustrated as follows:



The Matariki Land

- 6. The Matariki Land is predominantly planted with an established pinus radiata forest with the exception of approximately 21.87 hectares of native vegetation.

7. The Matariki Land can be illustrated as follows:



8. The Matariki Land is currently used predominantly for forestry purposes.

Vendors of the Springhill Land and reasons for sale

9. The vendor of the Springhill Land is Springhill Estate Limited which is owned by a New Zealand trust for the benefit of Antonio Frank Lentino and his family ("**Springhill Vendor**").
10. The Springhill Vendor notes that the reason for sale is that Mr Lentino passed away in 2016 and his surviving wife and children have since moved.
11. To date the Springhill Vendor has conducted a small scale sheep farming operation on the Springhill Land along with an aircraft repair operation from the airfield based on the land.
12. The Springhill Vendor notes that the sheep farming and aircraft operation were not profitable business making ventures and were largely run as hobby activities.

Vendors of the Matariki Land and reasons for sale

13. The vendor of the Matariki land is Matariki Forests, an overseas forestry entity which is predominantly owned by United States based entity Rayonier Inc ("**Matariki**").
14. The Applicant approached Matariki with an unsolicited offer prior to which there was no intention to sell the Matariki Land.
15. The Matariki Land accounts for approximately 0.5% of the Matariki's forestry holdings within New Zealand.

Sensitive Assets

16. The Land as a whole can be illustrated as follows:



17. The Land is sensitive because:
 - (a) It is non-urban land greater than 5 hectares; and
 - (b) It is adjacent to and includes Sunnybrook Scenic Reserve.

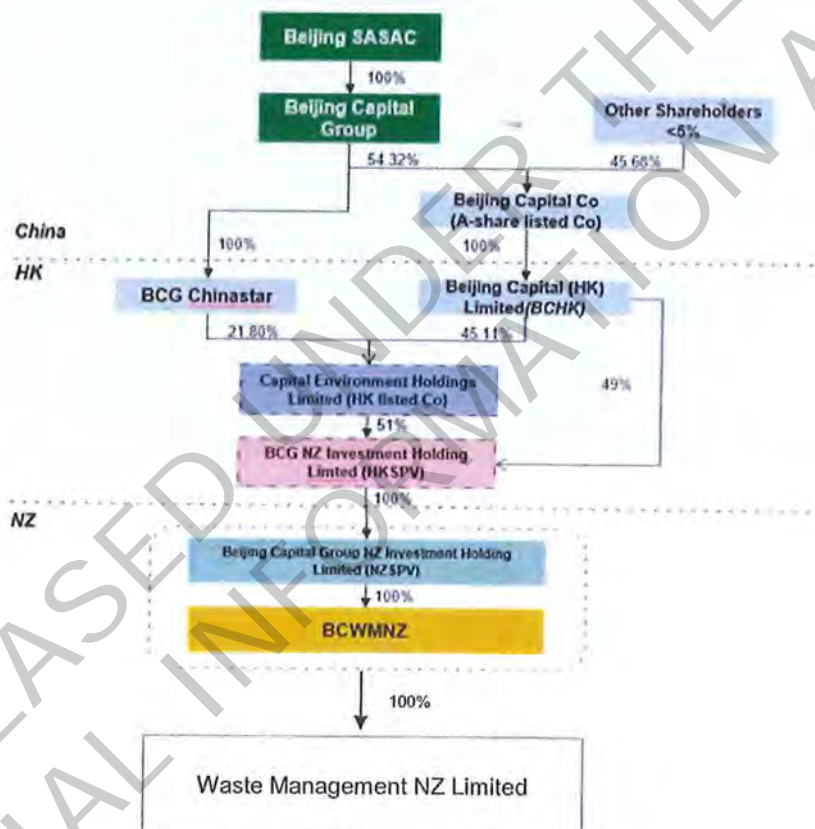
Flora and Fauna on the Land

18. The Applicant commissioned Tonkin + Taylor to undertake an analysis of the potential habitats and ecological features of the Land ("**Tonkin + Taylor Report**").
19. The Tonkin + Taylor Report was prepared in response to the Applicant's consultation with the Department of Conservation ("**DOC**").
20. The Tonkin + Taylor Report has identified several areas across the Land with significant ecological value including habitats of several native species as evidence in the following image:

27. The Applicant states that it is the country's largest and only fully integrated national waste provider employing approximately 1,400 staff across approximately 60 depots throughout New Zealand.

Ownership of the Applicant

28. The Applicant is ultimately majority owned by the State-owned Assets Supervision and Administration Commission of the Beijing Municipality (**Beijing SASAC**). Beijing SASAC is a Beijing state owned enterprise. The remainder of the ultimate beneficial ownership of the Applicant is widely held.
29. An ownership diagram for the Applicant is set out below.



30. Intermediate companies between the Applicant and Beijing SASAC are depicted in the ownership diagram. Two of the Applicant's parent entities are listed on a stock exchange:
- Beijing Capital Co is listed on the Shanghai Stock Exchange and specialises in water supply, sewerage treatment and pipe network construction; and
 - Capital Environment Holdings Limited is listed on the Hong Kong Stock Exchange and operates a business in providing waste management solutions and environmental infrastructure services in China.
31. The Applicant notes that, in particular, Beijing Capital Group NZ Investment Holding Limited and BCG NZ Investment Holding Limited are holding, non-trading companies.

32. Ultimate beneficial ownership breakdown by country of the Applicant is 83.12% People's Republic of China and 16.88% Hong Kong.¹

Control of the Applicant

33. The Applicant is the New Zealand operating company. It employs the personnel and operates the New Zealand business. The Applicant notes that all management and day to day decisions are made by the Applicant. The directors and senior management of the Applicant have delegated authority to approve capital and operating expenditure to a designated amount set out in company policies.
34. Some high level decisions must be made by the Beijing Capital Waste Management NZ Limited board. This includes decisions relating to the Applicant entering into new banking facilities with financiers, the commencement of significant legal proceedings, supplier purchases over [s 9(2)(b)(ii)] and signing off the annual accounts.
35. In addition, the members of the board of directors of Beijing Capital Waste Management NZ Limited are comprised of representatives of its major shareholders.²
36. We therefore consider that the Applicant is controlled by the board of directors of the Applicant and Beijing Capital Waste Management NZ Limited.

Relevant Overseas Person

37. We have determined that the 'relevant overseas person' is:
- (i) Waste Management NZ Limited; and
 - (ii) Beijing Capital Waste Management NZ Limited.

Individuals with Control

38. We have determined that the 'individuals with control of the relevant overseas person' are:

Individual	Role
Thomas Harvey Nickels	Directors of the Applicant
Hengjie Zhang	
Hans Evan Geoffrey Maehl	
Lishun Wu	Directors of Beijing Waste Management Capital NZ Limited
Guoxian Cao	
Bin Yang	
Meng Zhang	
Hengjie Zhang	

¹ As noted in the ownership diagram, Beijing Capital Co is owned 54.32% by Beijing Capital Group being a Beijing state owned enterprise and 45.68% of the shareholding is widely held. 33/09% of the shareholding of Capital Environmental Holdings Limited is also widely held. This adds to a total of 83.12% Chinese ownership and 16.88% Hong Kong ownership.

² It has a board of 7 directors: 1 independent director, 2 employees of the Applicant, 2 Beijing Capital Group representatives, 1 Beijing Capital Co representative and 1 Capital Environmental Holdings Limited representative.

Graham David Mulligan	
Thomas Harvey Nickels	

Overview of the Transactions

39. The Applicant has entered into two agreements for sale and purchase, one for the Matariki Land ("**Matariki Agreement**") and one for Springhill Land ("**Springhill Agreement**").

Springhill Agreement

40. The Springhill Agreement was executed in September 2017 with a purchase price of [s 9(2)(b)(ii)]
41. The Springhill Agreement is conditional on the Applicant receiving OIO consent by 12 September 2018.
42. The Applicant entered into the Springhill Agreement as a result of a tender process with the intent of purchasing the land as buffer land.

Matariki Agreement

43. The Applicant and Matariki entered into the Matariki Agreement as a result of an unsolicited offer by the Applicant with a purchase price of [s 9(2)(b)(ii)]
44. The Matariki Agreement contains a provision that grants Matariki a forestry right over the balance of the Matariki Land that will not contain the landfill. This will enable Matariki to continue to own the trees.
45. The Matariki Agreement is condition on the Applicant receiving OIO consent as well as obtaining Landfill Consents (as defined in the Matariki Agreement) on terms and conditions satisfactory to the Applicant.
46. Matariki will also be entitled to plant new trees on the Springhill Land to replace the area felled as a result of the landfill. This will form the basis of a substitute forest.
47. The Applicant will therefore own the freehold interest in the Land with Matariki retaining their forestry interest and investment.

Business Activities of the Applicant

48. As noted above, the Applicant is one of New Zealand's largest recycling and waste service companies.
49. The Applicant has a focus on modern, sustainable waste management by investing heavily in future sustainable technology.
50. The Applicant maintains a national fleet of around 800 trucks and 200 light vehicles and in 2017 began introducing electric kerbside waste collection trucks to New Zealand. As part of this investment, the Applicant intends to convert its diesel truck fleet to fully electric through an on-site conversion workshop.

Applicant's existing land holdings

51. The Applicant has several existing landfills throughout New Zealand including the Redvale landfill in Dairy Flats, Auckland ("**Redvale Landfill**").
52. The Applicant's current land interests in New Zealand include:
- (a) **Landfill:** Fairfield Landfill, Redvale Landfill, Bonny Glen Landfill, Kate Valley Landfill;
 - (b) **Composting Plant:** Puketutu Island;

- (c) **Refuse Transfer Station:** Waiheke Island, Wellington, Te Awamutu, Papakura;
 - (d) **Recycling site:** Lower Hutt; and
 - (e) **Offices and yard:** Lower Hutt.
53. It is anticipated that the Redvale Landfill will have reached capacity by 2026. The Applicant intends that the current Investment will replace the Redvale Landfill.
54. The Redvale landfill is shown in the picture below:



Investment Plan

Overview of Investment

55. The Applicant's existing Redvale Landfill is nearing capacity and will be no longer capable for servicing the receipt, treatment and disposal of waste for the Auckland region by approximately 2026. The Applicant intends to undertake this Investment as a means of replacing the Redvale Landfill.
56. The Applicant has been in the process of researching an appropriate site for a new landfill for North and West of Auckland for over ten years and has identified the Land as an appropriate location due to its direct access to State Highway 1 ("**SH1**"). The access to SH1 will enable a direct transportation route from Auckland which the Applicant anticipates will be more efficient for heavy haulage vehicles.
57. The Applicant also notes the Springhill Land will provide a large area of buffer land between the Investment and neighbouring residents to reduce noise, dust and any adverse visual appearance.

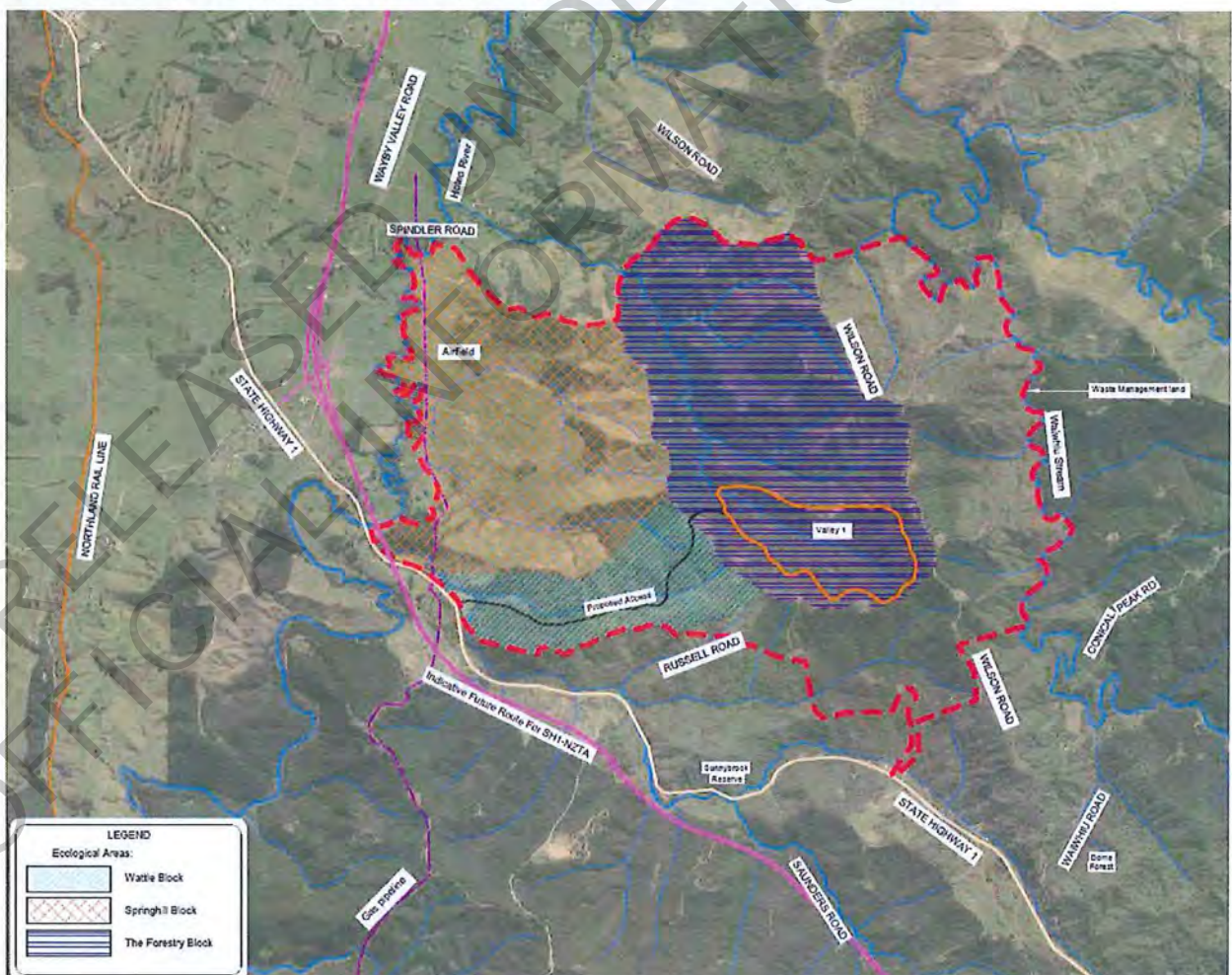
Landfills and the Auckland Region

58. The Auckland region is currently serviced by approximately three landfills, Redvale Landfill, Puwera landfill in Whangarei and Whitford landfill in South Auckland. The Redvale Landfill is currently responsible for servicing approximately [REDACTED] of the Auckland region.

59. The Applicant notes that it is likely to be inefficient to use the Whitford landfill to service North of Auckland as it will involve moving the waste across the city centre creating congestion and pollution. It is also noted that transporting the waste to Whangarei would be inefficient due to the large distance between Auckland and Whangarei.
60. The Auckland Council in the Auckland Unitary Plan notes that Redvale landfill is a significant and essential piece of Auckland infrastructure and therefore its succession plan is of high importance to the region.
61. The Applicant also states that the Redvale Landfill generates renewable energy through methane gas captured from the landfill which is used to services approximately 12,000 homes.

Area of the Landfill and buffer land

62. The Applicant intends that the landfill itself will be located on the Matariki Land.
63. Although still subject to a resource consent process, it is anticipated that landfill will be in the area outlined in orange with the access route along the black line. The whole area of the Land is outlined in red.



64. The balance of the Land will be used as buffer land to mitigate the effects of the landfill including noise and dust as well as to improve the visual appearance of the landfill.

65. It is intended that Matariki will replant any trees removed from the Land to create the landfill. This will also ensure that carbon credits are still derivable from the Land.
66. Within time, the Applicant intends to capture methane gas from the Investment, to continue to supply renewable energy to the Auckland power grid as it currently does at the Redvale Landfill.
67. This is estimated to take a few years from beginning of operation on the Land as it takes time for the gases to build up and be useable.

Consents required to undertake the Investment

68. In order to undertake the Investment, on the Land the Applicant will require multiple consents including but not limited to the following:
 - (a) Resource consent including land use and earthworks from the local district authority;
 - (b) Consent to access SH1 including intersection design, New Zealand Transport Agency and Auckland Transport approval;
 - (c) Vegetation removal consent to enable the Applicant to clear the Matariki Land where the Investment will be located including inspections by ecologists, archaeologists and limited disturbance plans;
 - (d) Discharge to air consent to mitigate the gasses being released into the atmosphere from the Investment and to ensure safe monitoring systems are in place;
 - (e) Contaminants to land and water consent including approved design standard for boreholes and ground water extraction;
 - (f) Industrial and trade activity consent including methods for storing hazardous substances, stormwater maintenance and run-off mitigation;
 - (g) Consent under the Wildlife Act 1953 to relocate any flora and fauna if required;
 - (h) Environmental Protection Authority consent for the bulk storage of hazardous substances and inspection requirements; and
 - (i) Ministry of Primary of Industries Biosecurity Act permit to mitigate any biosecurity risks.

Resource Consent

69. As set out above, one consent the Applicant will require prior to constructing a landfill on the Land is resource consent under the Resource Management Act 1991.
70. It is anticipated that the resource consent will take approximately 3 years to obtain. It is noted that this timeframe does not take into account any Environmental Court applications or appeals that may be required.
71. The Applicant has stated that it considers the grant of consents is a likely outcome, subject to conditions. This view is based on a review of its successful applications for consents at Redvale and Kate Valley landfills, engagement in a detailed site selection process undertaken by professional third party consulting engineers to support a consent application, and the Applicant's extensive experience in landfill operation in New Zealand.

72. The Applicant considers that any conditions of resource consent would address wide-ranging potential effects and be determined by an Auckland Council Hearings Committee or, if that decision is appealed, by the Environment Court of New Zealand.
73. The Applicant has advised that they intend to publically notify during the resource consent process to enable the local community to comment on the proposed Investment. We understand that DOC intends to make a submission setting out its views on the proposed use of the land as a landfill.
74. The Applicant is experienced in the industry and is knowledgeable in the consents required to undertake an Investment of this nature.
75. We note that there is uncertainty as to whether the Applicant will be able to obtain resource consent for the proposed landfill. However we consider that, on balance, the Applicant is likely to obtain resource consent which will enable it to construct a landfill on the Land given its track record with obtaining consents of this type.
76. We also note that the agreement for the purchase of the Matariki Land is conditional on the Applicant first obtaining resource consent. Therefore, provided consent under the Overseas Investment Act 2005 is granted, the Applicant will only acquire the Springhill Land prior to obtaining resource consent.
77. We have recommended that a condition of consent is imposed which requires the Applicant to obtain a resource consent which enables them to construct the landfill. The recommended condition also requires the Applicant to dispose of the Land if it is unable to obtain the resource consent.

What is likely to happen without the Investment

Counterfactual

As a result of *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 ("*Tiroa E*"), the OIO and relevant Ministers must apply a "counterfactual test" when assessing whether an overseas investment will, or is likely to benefit New Zealand. This test, which was described by the Court as a "with and without" test, requires a comparison of what is likely to happen with the investment, and what is likely to happen without the investment (the counterfactual).

78. To establish the appropriate counterfactual in this case, we have considered what the likely state of affairs would be without the Investment.

Marketing of the Land

79. The Springhill Land was marketed as follows:
 - (a) A tender process was run by Bayleys Real Estate;
 - (b) The property was first listed in July 2017;
 - (c) The Springhill Land was marketed through numerous websites, newspapers and magazines; and
 - (d) The advertisement ran for 34 days with several tenders received.
80. The Matariki Land has not been marketed as the Applicant approached Matariki with an unsolicited offer. The Matariki Land is currently used for forestry purposes, therefore no advertising was required under the Act.

Our Assessment of the likely Counterfactual

81. Without the Investment we consider that both properties are likely to continue to be used separately. The Matariki Land and the Springhill Land currently have distinctly separate uses. It is unlikely that both properties would be sold together because their separate uses are unlikely to be commercially viable to combine.

Springhill Land

82. From the information provided, we consider the most likely counterfactual for the Springhill Land is that it would be acquired by **an alternative New Zealand purchaser as a lifestyle property or to subdivide into additional lifestyle properties.**
83. Our reasons for the above are supported by the following:
- (a) The Springhill Land is being sold as a result of an estate sale with the surviving family members no longer residing at the property. With this in mind, we do not consider that the current ownership would likely be maintained as the Springhill Vendor has offered the Springhill Land on the open market;
 - (b) The Springhill Vendor received other tenders to acquire the Springhill Land as a lifestyle property; and
 - (c) There is existing resource consent over the Springhill Land to enable 13 additional dwellings to be constructed which is likely to be sought after in the Auckland region.

Matariki Land

84. From the information provided, we consider the most likely counterfactual for the Matariki Land is **that the status quo would be maintained.**
85. Matariki has owned the Matariki Land since 2005 and has undertaken significant investment to plant the forestry block which is yet to mature. We consider that it is unlikely that Matariki would sell the Matariki Land without realising their investment.

What would likely occur without the Landfill in the Auckland region

86. The Applicant is one of the largest waste removal companies in New Zealand with existing critical infrastructure in Auckland that needs to be replaced. It has taken the Applicant approximately 10 years to identify an appropriate replacement landfill site finally identifying this Land.
87. There are few New Zealand owned and operated entities in the waste disposal industry and we understand that none are of sufficient size to have the capital or skills necessary to undertake an Investment of this nature.
88. Without a replacement for Redvale Landfill, the Auckland region would be at risk of not being able to replace a critical piece of infrastructure which services Auckland's population.
89. The Applicant notes that should it be unsuccessful in acquiring this Land and obtaining the necessary consents to construct a landfill, it does not have a back up plan. Therefore it considers it is unlikely to have a replacement landfill for the Redvale Landfill when it is decommissioned.
90. This could mean that Auckland is without sufficient landfill infrastructure for a period of time until the Applicant or another landfill operator can find an alternative location and obtain the necessary consents to construct a landfill.

Does the Applicant meet the Investor Test criteria?

Business Experience s16(1)(a)

The relevant overseas person, or the individuals with control of the relevant overseas person, must have business experience and acumen relevant to the overseas investment. There is considerable flexibility in determining what is relevant and more or less specific expertise may be required depending on the nature of the investment. Business experience and acumen that contributes to an investment's success may be treated as relevant even though the investor may have to supplement its experience and acumen by utilising the experience and acumen of others to ensure the investment succeeds.

91. In this case, the Investment can be described as the acquisition of approximately 1,020 hectares of Land at Wellsford for the purpose of developing a landfill.
92. We have reviewed the biographical information provided by the Applicant for each of the individuals with control and note:
 - The Applicant and its directors have undertaken several similar projects within New Zealand;
 - The Applicant is the largest landfill operator in New Zealand;
 - The managing director, Tom Nickels has worked with the Applicant for approximately ten years; and
 - The individuals with control have extensive experience in fields including economics, land management, environmental engineering, transport, energy and resources, overseas investment, and financing and capital raising.
93. Having regard to the above, we are satisfied that the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment.

Financial Commitment s16(1)(b)

The financial commitment criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the overseas investment.

94. The 'financial commitment' criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the Investment (intentions are not sufficient).
95. In this case we are satisfied that the relevant overseas person has demonstrated financial commitment by:
 - entering into an agreement for sale and purchase of the Land including negotiating separate agreements for the Matariki Land and the Springhill Land;
 - paying the deposit required by the agreement for sale and purchase; and
 - engaging professional advisers such as legal representatives and Tonkin and Taylor.

Good Character s16(1)(c)

The decision maker must be satisfied that the individuals with control are of good character. Section 19 of the Act specifies that the decision maker must take the following factors into account (without limitation):

- (a) offences or contraventions of the law by A, or by any person in which A has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
- (b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

96. The Applicant has provided a statutory declaration stating that the individuals with control are of good character, have not committed an offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the Investment. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.
97. We have also conducted open source background checks on the individuals with control and found two allegations relevant to this criterion. These allegations are discussed further in **Appendix 4** however we do not consider they prevent a finding that the individuals with control are of good character.
98. Therefore, we are satisfied that the individuals with control are of good character.

Immigration Act s16(1)(d)

Section 15 of the Immigration Act specifies that certain convicted or deported persons are not eligible for a visa or permission to enter or be in New Zealand. Section 16 provides a power to deny a visa or permission to enter New Zealand for other specified reasons, such as if the individual is likely to be a threat or risk to security or public order.

99. The Applicant has provided a statutory declaration stating that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957. We have also conducted open source background checks on those individuals and found nothing relevant to this criterion.
100. Therefore, we are satisfied that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

Benefits that are likely to occur with the Investment

101. We **are satisfied** that the Investment is likely to benefit New Zealand in regard to the **following factors**:

Jobs – s17(2)(a)(i) - high relative importance

There are three key elements to this factor:

- The "new job opportunities" must be **new**, or if existing jobs are being "retained", the existing jobs **would or might** otherwise be lost if the investment does not proceed;
- The new job opportunities or retained jobs must be **in New Zealand**;
- The new job opportunities or retained jobs that are **likely to result** from the overseas investment must be **additional** to those which are likely to occur **without the overseas investment**.

102. We consider that this Investment is likely to result in the creation and retention of job opportunities in New Zealand as a result of the construction and on going operation of the landfill on the Land.

Creation of Jobs

103. The Applicant submits that it will create jobs in the Auckland region through the requirements of consultants during the pre-construction consenting and design process which it predicts will run from 2018 until 2022.
104. The Applicant also submits that it will require approximately 50-100 contract staff to construct the landfill from 2023 until 2025.

Retention of Jobs

105. Once constructed and operational, the Applicant anticipates that it will require approximately 30-40 staff to operate the facility.
106. The Applicant currently employs 52 staff at the Redvale Landfill many of which it anticipates will relocate to the new proposed landfill upon the closure of the Redvale Landfill.
107. The Applicant has provided further information about the types of jobs and salaries for the persons expected to be employed on the Land once the landfill is fully operational based on its current operations at the Redvale Landfill. This is included as Appendix 6.

Our Assessment

108. The Investment will result in a large infrastructure project being undertaken on the Land which is unlikely to occur without the Investment.
109. The Applicant will retain jobs through relocating many of the existing employs currently operating at Redvale Landfill to the new location. These jobs are otherwise likely to be lost upon closure of the Redvale Landfill.
110. We also consider that it is likely that multiple shorter term roles will be created within the first years of the Investment to facilitate the planning and construction of the development.
111. With the above in mind, we consider that the Investment is likely to result in the creation of jobs in the short to medium term with jobs to be retained in the long run as a result of the Investment.

Added market competition, greater efficiency or productivity, enhanced domestic services – s17(2)(a)(iv)

There are three key elements to this factor:

- The overseas investment must be likely to result in one or more of:
 - (i) **added market competition;**
 - (ii) **greater efficiency or productivity;** or
 - (iii) **enhanced domestic services.**
- The added market competition, greater efficiency or productivity, or enhanced domestic services must occur **in New Zealand.**
- The added market competition, greater efficiency or productivity, or enhanced domestic services that **is likely to result** from the overseas investment must be **additional** to that which is likely to occur without the overseas investment.

112. We consider that this Investment is likely to result in enhanced domestic services and increased efficiency in the waste disposal sector through the development of the landfill on the Land.

Increased efficiency

113. It is noted that without the Investment, and upon the closure of Redvale Landfill, the main landfills for the Auckland region are located South of Auckland at Whitford and at Hampton Downs.
114. This will result in the residual waste from the North and West of Auckland having to be transported across Auckland. The Applicant anticipates that this will require approximately 250-400 cross city trips per day by its trucks to service the necessary area. This will result in increased traffic congestion and increased emissions from heavy vehicles.
115. The location of the proposed landfill has been identified by the Applicant as suitable due to its proximity to SH1 North of Auckland.
116. We consider that this will increase the efficiency by eliminating the requirement for waste to be transported through the city.
117. We also consider it will be more efficient from an environmental angle through decreasing the level of emissions that would be created from the heavy vehicles transporting the waste across Auckland.

Enhanced Domestic Services

118. Auckland has a growing population which is likely to continue to grow for the foreseeable future. To cater for its growing population the Auckland Council has outlined the need for critical infrastructure to be present in the city to service the expanding population.
119. Auckland Council, in its waste reduction plan estimates that each Aucklander produced approximately 160 kilograms of waste per year.
120. We consider that this Investment would result in the enhancement of a domestic service through the provision of a secure waste facility for North and West Auckland to replace Redvale Landfill.
121. The Investment has a proposed lifespan from 2026 until 2060 which would ensure that Auckland's waste infrastructure continues to develop with its population in a safe and controlled manner.

Summary

122. We consider that this Investment is likely to enhance a domestic service in New Zealand and ensure that the service is enhanced in an efficient manner. Without the Investment, it is likely that Auckland's waste industry will become inefficient and cumbersome for those located in the North and West of Auckland.

Additional investment for development purposes – s17(2)(a)(v)

There are four key elements to this factor.

- The investment must be **additional investment**.
- The additional investment must be **introduced into New Zealand**.
- The additional investment must be **for development purposes**.
- The additional investment that is **likely to result from the overseas investment must be additional to that which is likely to occur without the overseas investment**.

123. The Applicant anticipates that it will cost approximately [s 9(2)(b)(ii)] to construct the landfill on the Land. The Applicant anticipates that this will be made up of approximately [REDACTED] of preconstruction work until 2021 and approximately [s 9(2)(b)(ii)] construction work from 2022-2024.

124. The Applicant states that it will fund the developments 60% through debt funding and 40% through retained earnings. Therefore only part of the development funds will be 'introduced' into New Zealand, being retained earnings which may otherwise be remitted overseas.
125. Without the Investment we consider it is unlikely that this level of additional investment for development purposes would occur as it is unlikely that another operator would develop a landfill of this nature in the short term. There may be some additional investment spent on the development of houses on lifestyle blocks on the Springhill Land. However this is unlikely to be to the same extent as the development proposed by the Applicant. Therefore we consider that the Investment is likely to result in some introduction of additional capital for development purposes.
126. For completeness we note that Applicant also estimates that the Investment will incur a cost of approximately [s 9(2)(b)(ii)] to operate during its lifetime however we do not consider that operation costs are additional investment for development purposes.

Indigenous vegetation/fauna – s17(2)(b) - high relative importance

There are three key elements to this factor:

- The relevant land must contain **significant existing**:
 - (i) **areas of indigenous vegetation**; or
 - (ii) **habitats of indigenous fauna**.
- There must be **adequate mechanisms** in place or proposed to **protect or enhance** the significant area or habitat.
- The protection or enhancement of the significant area or habitat that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

127. We consider that this Investment is likely to result in adequate mechanisms being adopted to protect and enhance the indigenous vegetation and fauna on the Land.
128. The Applicant has commissioned Tonkin + Taylor to undertake a desktop analysis of the indigenous vegetation and fauna on the Land which has outlined the presence of several areas of indigenous vegetation and habitats of indigenous fauna. This is further detailed in **Appendix 6**.
129. The Applicant has agreed to offer to covenant all significant natural areas that are not affected by the landfill as part of the resource consent process. This will ensure that significant natural areas on the Land are protected for future generations to the extent that the local authority agrees to the Applicant's offer to covenant areas.
130. The Applicant has also agreed to adopt the best practices to mitigate the effects of the landfill on the area as recommended by DOC.
131. Whilst it is noted that a landfill is likely to create some adverse effects on the Land, the Applicant has agreed to the extent discussed in Appendix 6 to offer through the resource consent process to mitigate the effects and ensure the balance of the buffer land is protected by covenants.

132. We consider that the significant natural areas on the Land would not have enduring protection to the extent the Applicant is proposing without the Investment. However given the potential adverse effects of a landfill on the Land, we consider this benefit should be given a low weighting as it is marginal the extent to which there is any net benefit to New Zealand arising under this factor.

Walking access– s17(2)(e)

There are four key elements to this factor:

- There must be **adequate mechanisms** in place or proposed to **provide, protect or improve walking access**.
- The walking access must be over the **relevant land**.
- The walking access must be **available to the public** or any section of the public.
- The provision, protection or improvement of walking access that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

Walking Access Commission Pre-consent Report

133. The Applicant has liaised with the Walking Access Commission ("**WAC**") in relation to access over the Land. In response, WAC has prepared an OIO pre-consent report, dated May 2018 ("**WAC Report**"), with preliminary access recommendations.

134. The Land is adjacent to the Sunnybrook Scenic Reserve which is managed by DOC. WAC have outlined that the largest opportunity for access in relation to the Land exists in relation to the Sunnybrook Scenic Reserve and access to the Waiwhiu Stream.

135. WAC recommends that the Applicant undertake the following:

- (a) Establish and form secure walking and cycling access to and along Waiwhiu Stream, along with amenity areas that may be appropriate at any swimming or picnicking sites on the stream;
- (b) Consult with WAC and DOC on opportunities to enhance the recreational value of Sunnybrook Scenic Reserve, and implement agreed enhancements;
- (c) Consult with WAC on the opportunity to create mountain biking tracks on the property, and if appropriate, enter into a Memorandum of Understanding with the local mountain biking/cycling group to establish and manage any mountain biking recreation; and
- (d) Show on the survey plans any esplanade strip, access strip or walkway easements, and any existing marginal strips which have not been captured in the LINZ cadastral mapping system.

Applicant's submissions on the proposed walking access

136. Following consultation with WAC the Applicant intends to provide the walking access as recommended by WAC above in paragraph 135. The Applicant has also agreed to continue to liaise and update WAC with its progress of implementing the recommendations.

137. With the above in mind, we are satisfied that this Investment is likely to result in enduring walking access above that which is likely to occur without the Investment.

Special land – s17(2)(f)

Special Land is foreshore, seabed, riverbed or lakebed.

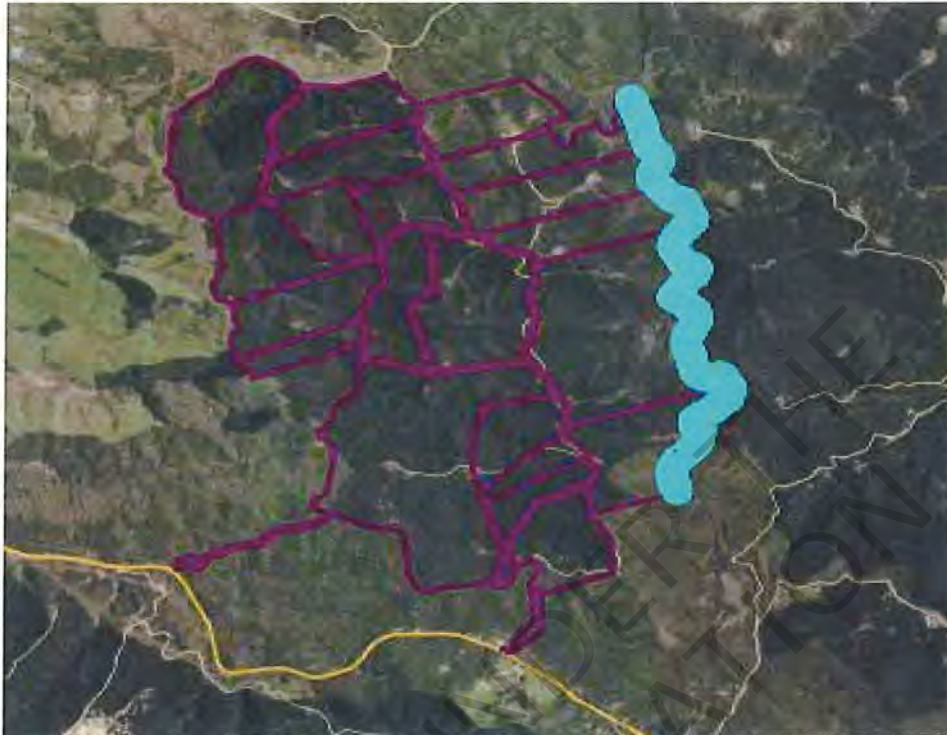
Overview of the Special Land at Springhill

138. The Land comprised and described in Computer Registers NA939/169, NA939/170, 393450 and 252010 include part of the Hoteo River ("**Springhill Special Land**").
139. The Springhill Special Land and can be illustrated in the below maps with the location of the river being coloured in blue:



Overview of the Special Land at Matariki

140. The Land comprised and described in Computer Registers NA870/214, NA26C/477, NA2D/102, NA634/125, NA761/222 and NA599/297 include part of the Waiwhiu Stream and other various tributaries of the Hoteo River ("**Matariki Special Land**").
141. The Springhill Special Land and can be illustrated in the below topography and aerial maps with the location of the river being coloured in blue:



142. In accordance with the Overseas Investment Regulations 2005, the special land has been offered to the Crown for nil consideration.
143. We note that only the first step needs to be completed before an application for consent is determined (section 17(2)(f) of the Act relates to the offer of the special land rather than its acquisition by the Crown). We will forward a separate report in due course regarding whether the Crown should acquire the Special Land.
144. In the interim, we recommend that a consent condition be imposed requiring the Applicant to deal with the Crown in accordance with the Regulations, including requiring the Applicant to be bound by any arrangement that the relevant Vendor entered into with the Crown in relation to the special land (preserving the Crown's position). The proposed consent conditions are set out in **Appendix 1**. Based on this, we consider that this factor has been met.

Previous investments – r28(e)

There are two key elements to this factor:

- The **relevant overseas person** must have **previously undertaken investments**;
- The previous investments must have been, or are, of **benefit to New Zealand**.

145. The Applicant and its subsidiaries are repeat investors in New Zealand with multiple investments in the waste industry across New Zealand. The Applicant has a positive track record in undertaking investments of this nature and has significant experience in operating landfill facilities.

146. The Applicant has provided information on its previous investments which include:

- (a) Developing the Redvale Energy Park and Landfill (approximately [REDACTED] [REDACTED]). With the implementation of a gas collection system designed and installed at Redvale, the Applicant advises it is capturing in excess of 90% of the gas generated at that site, reducing emissions at that landfill well in excess of the industry standard in New Zealand. The majority of the gas is converted to electricity by Jenbacher engine generators (current generation volumes are up to 12MW) and supplied back to the grid, with some used for the on-site treatment of leachate (an aqueous waste landfill by-product), and some used to provide local commercial greenhouses with gas fuel for heating boilers.
- (b) Obtaining consent for, developing and operating the Kate Valley Landfill through and on behalf of its Transwaste Canterbury joint venture in Christchurch (approximately [s 9(2)(b)(ii)] [REDACTED]). The Applicant's investment in the Kate Valley landfill has helped increase employment in the region by approximately 45-50 FTE (engaged in management of the landfill operations and the associated transport system), as well as regularly contracting up to 30 additional construction staff for around 6 months per year over most summer seasons (the construction season). The Kate Valley landfill also generates up to 2MW of electricity.
- (c) Developing and operating the Burwood Resource Recovery Park through and on behalf of its Transwaste Canterbury joint venture in Christchurch for the processing and recovery of earthquake demolition, waste and recyclables in Christchurch (approximately [s 9(2)(b)(ii)] [REDACTED]). Since opening in 2011 (11 days after the February earthquake in Christchurch) the Burwood Recovery Park has recovered over [s 9(2)(b)(ii)] [REDACTED] of reusable material from incoming earthquake demolition material, which has contributed to the Christchurch rebuild effort. The Burwood Recovery Park also provides employment for 10 staff (and during its peak operations, employment was as high as 20 staff).
- (d) Designing, developing and operating the Whitford Sanitary Landfill and East Tamaki Refuse Transfer Station through its joint venture with the Council.
- (e) Developing recycling and materials recovery facilities in New Zealand. The Applicant's investment in recycling facilities around New Zealand has seen its overall recycling volumes increase by around 18% over the past two years (from approximately [s 9(2)(b)(ii)] [REDACTED] in 2014 to [s 9(2)(b)(ii)] [REDACTED] in 2016).

147. We consider that it is inappropriate to credit the Applicant with previous investments made by the Applicant when it was under different ownership. We note that some of the previous investments above were undertaken by the Applicant prior to its current overseas ownership by the Beijing Capital group (initially acquired in 2014). However the extent to which the initiatives have continued under the Applicant's current ownership can be taken into account.

148. We consider that the Applicant's investments have benefitted New Zealand in numerous ways in particular through the creation of jobs, the introduction of significant capital for development purposes and through enhancing domestic services for New Zealanders.

Advance significant government policy or strategy – r28(f)

There are three key elements to this factor:

- The overseas investment **must give effect to or advance** a specific **Government policy or strategy**.
- The Government policy or strategy must be **significant**.
- The effect or advancement that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

149. The Applicant submits that this Investment is aligned with local Government waste policies and strategies including the Auckland Unitary Plan, Auckland future urban land supply strategy and the Auckland Waste Assessment 2017.
150. The Auckland Council outline in the Auckland Waste Assessment 2017 provides that Auckland’s population is expected to exceed 2.1 million by 2040. The future urban land strategy outlines that the largest areas of growth are likely to be in the North and North-West of Auckland.
151. The Council acknowledges that there will be an increase in waste in the city as a result of the population growth and also as result of the demand for waste services as a result of infrastructure and development projects to service the increased population.
152. The Council expects several of its large scale infrastructure projects such as the City Rail Link, Hunua 28 kilometre water main and the Skycity/ Fletcher Construction International Convention Centre to create significant waste material.
153. The Council estimates the following waste to landfill figures from 2017 to 2040:

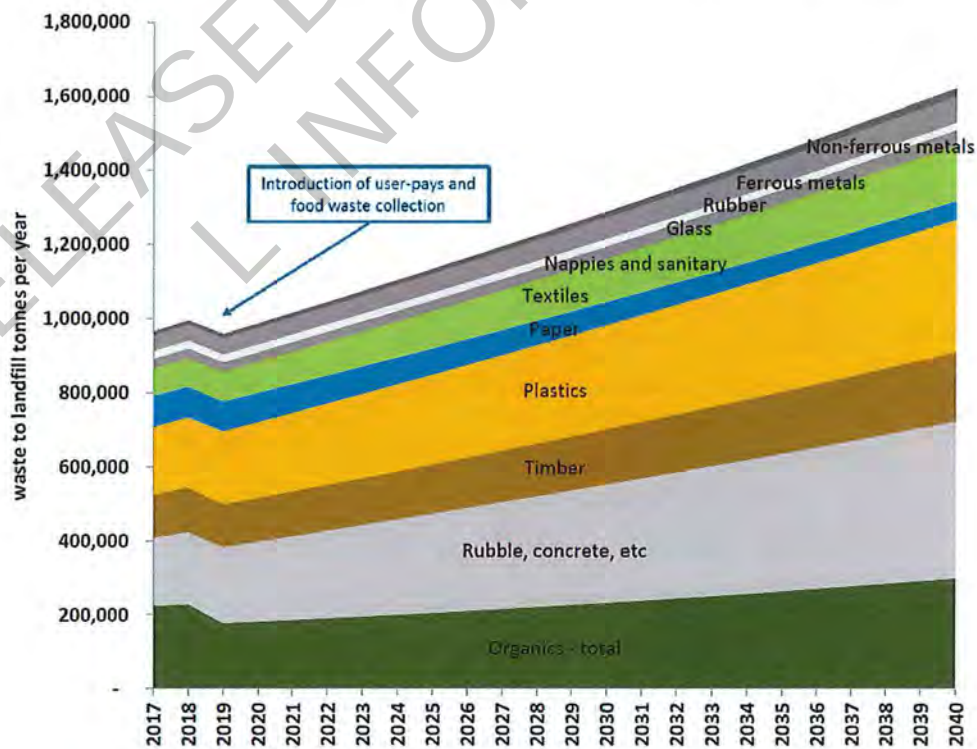


Figure 6: Auckland regional waste to landfill projections – with estimated composition breakdown (excluding special waste)

154. The Council notes that in order to fulfil Auckland’s landfill requirements they will need assistance from the private waste sector. This Investment is likely to result in critical infrastructure being provided to the Auckland region which is unlikely to be provided in a timely manner without the Investment.
155. Based on the information provided and the significant policies and strategies of the local Auckland government which this Investment will advance, we consider that this Investment is likely advance a local Government policy.

Benefit to New Zealand Test - s16(1)(e)(ii) and (iii)

Benefit test

156. In order for consent to be granted, the Applicant must demonstrate:
- (a) that the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - (b) that the benefit will be, or is likely to be, substantial and identifiable.
157. We have assessed the benefit likely to result from this Investment in accordance with the rural land directive contained in the directive letter dated 28 November 2017 (for the reason set out in paragraph 24).
158. We have undertaken our assessment having regard to the characteristics of the Land and the nature of the interest being acquired (reflecting the proportional nature of the benefit assessment).

Rural land directive

159. In relation to rural land, the Ministerial Directive letter, dated 28 November 2017 states:

The primary sector, and the rural land it is based on, forms a particularly important part of the New Zealand economy.

The Act acknowledges the privilege associated with the ownership or control of rural land is greater than for non-rural land by requiring the benefits resulting from the overseas investment to be substantial and identifiable (a higher threshold).

The merits of overseas investment in the primary sector can be less compelling given that we are already world leaders in this area. The Government is therefore concerned to ensure that the benefits from overseas investments in rural land are genuinely substantial and identifiable.

160. This Investment includes rural land however we note that the Applicant is not investing in the primary sector. The rural land directive provides that the following factors will generally be of high relative importance:
- (a) The ‘jobs’ factor;
 - (b) The ‘new technology or business skills’ factor;
 - (c) The ‘increased exports receipts’ factor;
 - (d) The ‘increased processing of primary products’ factor; and
 - (e) The ‘oversight and participation by New Zealanders’ factor.
161. We consider that the Investment is likely to benefit New Zealand with regard to the individual factors set out in the report above. In particular we note the construction of a landfill on the Land is likely result in:
- (a) The creation of jobs to construct and develop the landfill;

- (b) The retention of jobs being staff at the Applicant's Redvale landfill who will be transferred to the new landfill once Redvale Landfill reaches capacity;
 - (c) Enhanced domestic services being the provision of a landfill facility to service North and West Auckland upon the existing landfill reaching capacity;
 - (d) Increased efficiency through the location of the landfill being closer to the waste source;
 - (e) Additional investment being introduced into New Zealand for the purpose of funding some of the construction of the landfill.
162. The Applicant has also agreed to provide some walking access on the Land to the Sunnybrook Scenic Reserve and the Waiwhiu Stream. It also intends to undertake some measures to ensure that areas of significant indigenous vegetation and habitats of indigenous fauna are protected from the effects of the proposed landfill.
163. The Applicant has other investments in landfills and related infrastructure in New Zealand. It currently employs approximately 1,400 staff across 60 depots across New Zealand.
164. The construction of the landfill is also likely to advance Auckland Council's strategies for waste management.
165. We consider that, when viewed collectively, the benefit to New Zealand that is likely to occur as a result of the construction of a landfill on the Land is likely to be substantial and identifiable.

Benefits not likely to occur

166. We considered that the factors below were either not relevant to the Investment or a benefit to New Zealand was unlikely to arise with regard to those factors. The Applicant made submissions in relation to some of these factors. However, we were **not** satisfied that the evidence provided showed that these benefits were likely to result from the Investment.
167. The following factors were therefore not met:

Factor	Reason not met / not relevant
New technology or business skills – 17(2)(a)(ii) - high relative importance	The Applicant submits that this factor is relevant as it uses electric trucks in its fleet and uses the landfill to capture gas to form renewable energy. As the Applicant already has a fleet of electric trucks and is using gas to create renewable energy in its other landfills we do not consider that new technology that will be introduced into New Zealand as a result of this Investment.
Increased export receipts – 17(2)(a)(iii) - high relative importance	The Applicant submits that this factor is not relevant as the Investment relates to a domestic service and we agree.

Factor	Reason not met / not relevant
Increased processing of primary products – 17(2)(a)(vi) – high relative importance	The Applicant submits that this factor is not relevant as the Investment will not result in the processing of primary products and we agree.
Trout, salmon, wildlife and game – s17(2)(c)	Please refer to Appendix 6 .
Historic heritage – 17(2)(d)	The Applicant submits that this factor is not relevant as the Land does not contain any historic heritage and we agree.
Consequential benefits – 28(a)	<p>The Applicant submits that it currently provides funding to community groups at Redvale. The Applicant notes that it will provide similar funding/grants for groups in the local community as a result of this Investment.</p> <p>As the Applicant already undertakes much of the funding activities, we consider this is likely to occur without the Investment and therefore we do not consider that is likely to result from the Investment.</p>
Key person in a key industry – 28(b)	<p>The Applicant submits that this factor is relevant as the Applicant's parent entities are key players in the Chinese waste industry.</p> <p>We do not consider that sufficient evidence has been provided to show that waste disposal is a key industry to China and therefore this factor is not met.</p>
Affect image, trade or international relations – 28(c)	<p>The Applicant submits that they are a highly-reputable organisation and declining the Investment could have an adverse impact on New Zealand receiving further investment from China.</p> <p>We do not consider that a well reasoned decline would be likely to affect New Zealand's image. It is also unlikely to breach any of its international obligations.</p>
Owner to undertake other significant investment – 28(d)	The Applicant submits that this factor is not relevant as the Vendors do not intend to undertake other significant investment as a result of this Investment.

Factor	Reason not met / not relevant
Enhance the viability of other investments – 28(g)	<p>The Applicant submits that this Investment will likely enhance the on-going viability of their other investments in particular the Redvale Landfill.</p> <p>The Applicant has noted that the Redvale Landfill is nearing capacity by 2026. It is unclear how this Investment will enhance the viability of the Redvale Landfill directly therefore we do not consider that this is a benefit that is likely to result from the Investment.</p>
Strategically important infrastructure – 28(h)	The Applicant submits that this factor is not relevant as the Investment does not relate to any strategically important infrastructure and we agree.
Economic interests – 28(i)	<p>The Applicant submits that this Investment is likely to promote New Zealand's economic interests through increasing New Zealand's economic capacity.</p> <p>We consider that many of the points raised by the Applicant under this factor have already been considered under other factors. We therefore do not consider that this is a benefit that is likely to result from the Investment.</p>
Oversight and participation by New Zealanders – 28(j) - high relative importance	The Applicant is 100% overseas owned. Whilst the Applicant does have some New Zealand directors, we do not consider that they have adequate oversight to satisfy the elements of this factor. We therefore do not consider that this is a benefit that is likely to result from the Investment.

Has the farm land been offered on the open market?

Farm land advertising - s16(1)(f)

The Regulations require farm land or farm land securities to be offered for acquisition on the open market to non-overseas persons for at least 20 working days (or longer if the advertisement states or implies that offers will be accepted for that longer period). The purpose of such advertising is to ensure non-overseas persons have reasonable notice that they are available for acquisition. The Regulations do not require that the vendor accept any alternative offer made by a non-overseas person.

168. The regulations relating to the offer of farm land on the open market apply to the Springhill Land only. The Matariki Land is not farm land as it is operated as a forest block.
169. The Springhill Land was marketed by Bayleys Real Estate from 24 July 2017 for 34 working days through a variety of media including:
- (a) Websites including bayleys.co.nz, realestate.co.nz and hougarden.com; and

(b) Newspapers and magazines.

170. The Applicant's agreement to purchase the Springhill Land was entered into after the advertising occurred. We are satisfied that the farm land advertising complies with the requirements in the Regulations.

Consent criteria

171. As detailed above, we are satisfied that the criteria in section 16 are met, and therefore consent should be granted to the Investment.

Third Party Submissions

172. A third party submission was received from Michael Law. A summary of the third party submission and the Applicant's responses are set out in Appendix 5.

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Appendix 1 - Proposed Decision

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Consent for Overseas Person to Acquire Sensitive New Zealand Land

Read this consent carefully - you must comply with all the conditions. If you do not, you may be required to dispose of the land and/or be subject to fines or other penalties.

Consent

Decision date: [date]

The following people have been given the following **consent**:

Case	201720096
Consent	Waste Management NZ Limited may acquire the Land subject to the Conditions set out below.
Consent holder/s	Waste Management NZ Limited We will also refer to the Consent holder as you .
Land	Means the Matariki Land and the Springhill Land.
Matariki Land	A freehold interest in approximately 656.9413 hectares at Wellford comprised in the following computer freehold registers: NA1149/47, NA1149/48, NA136/300, NA1937/63, NA26C/477, NA279/207, NA28A/580, NA2D/102, NA31B/790, NA50B/713, NA599/296, NA599/297, NA599/299, NA634/125, NA643/294, NA761/222, NA870/214, NA907/217, NA27D/570 (all North Auckland registry)
Springhill Land	A freehold interest in approximately 363.5567 hectares at Wellford comprised in the following computer freehold registers: 252010, 278282, 393450, NA138D/56, NA42B/697, NA42B/698, NA42B/699, NA781/62, NA939/169, NA939/170
Timeframe	You have 12 months from the date of consent to acquire the Springhill Land. You have until 30 November 2024 to acquire the Matariki Land.

Conditions

Your Consent is subject to the Special conditions, Standard Conditions and Reporting conditions (**Conditions**) set out below. You must comply with them all. Be aware that if you do not comply with the Conditions you may be subject to fines or other penalties, and you may also be required to dispose of the Land.

In the Consent and the conditions, we refer to the Overseas Investment Office as **OIO, us or we**.

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and were considerations that particularly influenced us to give consent:

Details	Required date
Special condition 1: Resource Consent	
1. You must apply for resource consent and all other required consents to construct the Landfill. Landfill means a landfill to replace the Redvale Landfill in Auckland to be constructed on the Land. If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.	By 30 November 2019
2. You must obtain resource consent to construct the Landfill. If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.	By 30 November 2023
3. You must obtain all other necessary consents to construct the Landfill. If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.	By 30 November 2024
Special condition 2: Construct and operate the Landfill	
1. You must commence construction of the Landfill. If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.	By 30 November 2024
2. You must commence operation of the Landfill. If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.	By 30 November 2026

Special condition 3: Access Conditions	
<p>Consultation</p> <p>1. You must consult with the Walking Access Commission ("WAC") and the Department of Conservation ("DOC") on the following:</p> <p>(a) opportunities to enhance the recreational value of Sunnybrook Scenic Reserve; and</p> <p>(b) opportunities to create mountain bike tracks on the Land.</p> <p>You must meet the cost required to undertake this consultation.</p>	<p>As soon as possible and no later than 30 November 2019</p>
<p>Reach agreement</p> <p>2. Upon consultation with WAC and DOC as outlined above in 1, you must agree to implement all reasonable recommendations made by WAC and DOC including:</p> <p>(a) Implementation of at least two opportunities identified in 1(a); and</p> <p>(b) Implementation of at least two opportunities identified in 1(b); and</p> <p>(c) enter into a Memorandum of Understanding with local mountain biking and cycling groups to establish and manage any mountain biking recreation (if reasonably requested by WAC).</p> <p>You must meet the costs required to fulfil this condition.</p>	<p>As soon as possible and no later than 30 November 2023.</p>
<p>Implementation</p> <p>3. You must implement all opportunities identified and agreed to as a result of Special Conditions 2(a) and 2(b).</p> <p>You must meet the cost of implementing all of the above.</p>	<p>As soon as possible and no later than 30 November 2027</p>
<p>Waiwhiu Stream Access</p> <p>4. You must establish and form a walking and cycling access way secured in the manner referred to in Special Condition 3(5) to and along the Waiwhiu Stream, including amenity areas that may be appropriate at any swimming or picnicking sites along the stream.</p> <p>You must meet the cost of implementing the outlined access.</p>	<p>As soon as possible and no later than 30 November 2027</p>
<p>Registration of access</p> <p>5. You must register by esplanade strip, or a walkway easement any of the access implemented under Special Condition 3.</p> <p>You must meet the cost of implementing all of the above.</p>	<p>As soon as possible and no later than 30 November 2027</p>

<p>6. If you and WAC cannot agree to the actions outlined in special condition 3 (dispute) you must refer the dispute to mediation. You and WAC will agree on a suitable person to act as mediator or, if you cannot agree, you will ask the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a mediator. The mediation will be in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc.</p> <p>If the dispute is not resolved within 60 days after a mediator is appointed, you must refer the dispute to arbitration. You and WAC will agree on a suitable person to act as arbitrator. If you cannot agree, you will ask the President of the New Zealand Law Society to appoint an arbitrator. The arbitration will be in accordance with New Zealand Law and the Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc.</p> <p>You must pay the costs of the mediation / arbitration.</p>	<p>On-going</p>
<p>7. You must report to WAC on a six monthly basis on your progress towards complying with special condition 3.</p>	<p>On-going</p>
<p>Special condition 4: Protection of significant natural areas</p>	
<p>1. You must provide the following information to interested parties including but not limited to DOC and all local mana whenua including Ngati Manuhiri, Ngati Whatua and Ngati Rongo:</p> <p>(a) A project plan that accurately details the proposed use of the Land and the proposed mitigation;</p> <p>(b) An intensive survey to a standard acceptable by DOC of all significant natural areas being areas of significant indigenous vegetation or significant habitats of indigenous fauna ("SNA") on the Land including the site of the proposed Landfill; and</p> <p>(c) A map of all headwater waterways systems including ephemeral and intermittent systems.</p>	<p>Prior to lodging the resource consent application and no later than 31 May 2019</p>
<p>2. You must consult fully with all mana whenua with interests in and/or adjacent to the Land.</p>	<p>Prior to lodging the resource consent application and no later than 31 May 2019</p>

<p>3. You must offer to protect and covenant ALL SNAs on the Land that are not affected by the Landfill and the Forestry Rights Agreements included with this application as part of your resource consent application for the Landfill.</p> <p>Every covenant that you offer in satisfaction of this condition must be on terms that the covenantee, acting reasonably, approves. You may agree the terms of the covenants with the covenantee prior to making an application for resource consent, during the resource consent process or within a reasonable period of time after resource consent has been granted.</p> <p>This includes but is not limited to the areas specified in schedule five of the agreement for sale and purchase for the Matariki Land. The extent and terms of the covenants shall also take into account the terms and conditions of your resource consents for the Landfill, as well as the Forestry Rights Agreements with Matariki.</p> <p>A minimum of 40 ha. shall be protected as part of this covenanted area subject to discussion with the Department of Conservation.</p>	<p>Prior to, or at the time of, lodging the resource consent application</p>
<p>4. The development of the Landfill must comply with the New Zealand Fish Passage Guidelines (2018).</p>	<p>On-going</p>
<p>5. You must offer to adopt best practice (e.g. Auckland Council GD05) to avoid or minimise sedimentation entering any of the waterways on the Land or adjacent to the Landfill as part of your resource consent application for the Landfill.</p>	<p>On-going</p>
<p>6. To the extent you are felling trees on the Land that might provide habitats for or contain long tailed bats, you must adopt reasonable techniques for avoiding or mitigating effects on the bats.</p>	<p>On-going</p>
<p>7. You must adopt the best practicable option as part of your Landfill development and operation to avoid sedimentation entering any streams or waterways on the Land that provide habitats for Hochstetter frogs.</p> <p>You must protect water quality and stream habitat (in areas of the Land not affected by the Landfill or the Forestry Rights Agreements) supporting Hochstetter's frogs</p>	<p>On-going</p>
<p>8. You must offer to undertake predator control on the Land as part of the resource consent process including securely fencing the Landfill operational area and adopting mitigating solutions to manage any feral cat population or other wild animals that could threaten the SNA on the Land or adversely affect threatened species on neighbouring reserves such as bittern and fernbird.</p>	<p>Prior to, or at the time of, lodging the resource consent application</p>

<p>9. You must consult with DOC to determine what you can reasonably do to riparian plant and/ fence for the purpose of stock exclusion along the Hoteo river as part of your resource consent process for the Landfill.</p> <p>You must implement DOC's recommendations in this regard.</p>	<p>By 31 May 2019</p> <p>As soon as possible and no later than 31 May 2021</p>
<p>10. If you do not comply with this Special Condition 4, or any part of it, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	<p>On-going</p>
<p>Special condition 5: Special Land</p>	
<p>1. You must, upon becoming the registered proprietor of the Matariki Land and the Springhill Land, adopt and be bound by any offer, arrangement or agreement that the vendor has made, reached or entered into with the Crown in relation to the Special Land that forms part of the Matariki Land and the Springhill Land.</p> <p>2. You must, within 10 working days of being requested to do so by the Crown:</p> <ul style="list-style-type: none"> (a) enter into a deed of covenant with the Crown to be bound; (b) deal with the Crown in accordance with the requirements of the Act as if it were the party making the initial offer of the Special Land to the Crown; (c) enter into negotiations in good faith to ensure the Special Land is transferred to the Crown on terms acceptable to the Crown and in accordance with Regulations; and/or (d) agree to an encumbrance or covenant in gross being registered to protect the Crown's interest upon the Crown's request. <p>3. The Crown reserves the right to caveat the Matariki Land and the Springhill Land until an encumbrance or covenant has been registered.</p> <p>4. You will be responsible for all of its own costs incurred as a result of the transfer of the Special Land.</p> <p>If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>As soon as requested to do so by the Crown.</p>

Standard conditions

You must also comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand land, including you:

Details	Required date
Standard condition 1: acquire the Land	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"> 1. by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and 2. using the acquisition, ownership and control structure you described in your application. Note, only you – the named Consent holder - may acquire the Land, not your subsidiary, trust or other entity. 	As stated in the Consent
Standard condition 2: tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land. Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the Land (Settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Land, and 4. copies of any transfer documents and Settlement statements. 	As soon as you can, and no later than two months after Settlement
Standard condition 3: allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</p> <p>We will give you at least two weeks' written notice if we want to do this.</p> <p>You must then:</p> <ol style="list-style-type: none"> 1. Allow a person we appoint (Inspector) to: <ol style="list-style-type: none"> (a) enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection), (b) remain there as long as is reasonably required to conduct the inspection, (c) gather information, (d) conduct surveys, inquiries, tests and measurements, (e) take photographs and video records, and (f) do all other things reasonably necessary to carry 	At all times

<p>out the Inspection.</p> <p>2. Take all reasonable steps to facilitate an Inspection including:</p> <ul style="list-style-type: none"> (a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, (b) being available, or requiring your employees, agents, tenants or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required. <p>During an Inspection:</p> <ul style="list-style-type: none"> (a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents, (b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection. 	
Standard condition 4: remain of good character	
<p>You and the Individuals Who Control You:</p> <ol style="list-style-type: none"> 1. must continue to be of good character, and 2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. <p>In summary, these sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to prevent a threat or risk to security, public order or the public interest.</p> <p>The Individuals Who Control You are individuals who:</p> <ul style="list-style-type: none"> (a) are members of your governing body, (b) directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you, and (c) are members of the governing body of the people referred to in paragraph (b) above. 	<p>At all times</p>
Standard condition 5: tell us about changes that affect you, the people who control you, or people you control	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p>	<p>Within 20 working days after the change</p>

1. You, any Individual Who Controls You, or any person in which you or any individual who controls you hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about any offences or contraventions that you are charged with or sued over and any investigation by enforcement or regulatory agencies or professional standard bodies.
2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Land; or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (see standard condition 4).
3. You cease to be an overseas person or dispose of all or any part of the Land.
4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the event held) a 25% or more ownership or control interest:
 - (d) becomes bankrupt or insolvent
 - (e) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or
 - (f) becomes subject to any form of external administration.

Standard condition 6: dispose of the Land if you do not comply with key Special conditions

Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those Special conditions in a material way we may require you to dispose of the Land.

We may also require you to execute a security deed before you may acquire the Land. The security deed:

1. must be in the form we require,
2. must be executed and delivered to us before you acquire the Land,
3. gives us power to appoint a receiver to dispose of the Land if you do not do that as required by this Standard condition 6,
4. will provide, among other things, that if we appoint a receiver, the receiver may dispose of the Land, deduct his or her costs from the proceeds of sale, and pay the remainder to you.

<p>If all or part of this Standard condition 6 applies to a Special condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	
<p>1. Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.</p>	<p>Within six weeks of the date of our notice.</p>
<p>2. Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.</p>	<p>Within six weeks of the date of our notice.</p>
<p>3. Dispose of the Land: dispose of the Land to a third party who is not your associate.</p>	<p>Within six months of our notice.</p>
<p>4. Offer without reserve: offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.</p>	<p>Within nine months of our notice.</p>
<p>5. Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.</p>	<p>By the last day of every March, June, September and December after our notice or at any other time we require.</p>
<p>6. Report disposal to us: send us, in writing, evidence:</p> <ul style="list-style-type: none"> (a) that you have disposed of the Land, (b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), (c) the purchaser is not your associate. 	<p>Within one month after the Land has been disposed of.</p>

Reporting conditions

We need information from you about how your Investment Plan is tracking so we can monitor your progress against the Conditions and so we can measure the benefits you have brought to New Zealand through your investment.

Every year, you must lodge an **annual report**. It must:

1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
 - (a) Year one: 1 November 2019
 - (b) Year two: 1 November 2020
 - (c) Year three: 1 November 2021
 - (d) Year four: 1 November 2022
 - (e) Year five: 1 November 2023
 - (f) Year six: 1 November 2024
 - (g) Year seven: 1 November 2025
 - (h) Year eight: 1 November 2026
 - (i) Year nine: 1 November 2027
 - (j) Year ten: 1 November 2028
2. contain information about:
 - (a) your progress in implementing the special conditions; and
 - (b) the mitigating steps you are undertaking to protect the environment.
3. follow the format of the template annual report published on our website at <https://www.linz.govt.nz/overseas-investment/enforcement/how-we-take-action>

Appendix 2 - Instructions

1. Ministers must grant consent to this overseas investment if they are satisfied that all of the criteria in section 16 of the Overseas Investment Act 2005 (“the Act”) are met. They must decline to grant consent if they are not satisfied that all of the criteria in section 16 are met. Ministers must not take into account any criteria or factors other than those identified in sections 16 and 17, and regulation 28 of the Overseas Investment Regulations 2005 (“the Regulations”).
2. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16 and 17, and regulation 28 that Ministers are required to consider in this case.

“Benefit to New Zealand criteria”

3. In this case, section 16 requires Ministers to decide, among other things, whether they are satisfied in relation to the following “benefit to New Zealand” criteria:
 - (a) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined under section 17 (section 16(1)(e)(ii)); and
 - (b) that benefit will be, or is likely to be, substantial and identifiable (section 16(1)(e)(iii)).
4. The application of the benefit to New Zealand criteria involves the exercise of Ministerial judgement. The fact that responsibility for making this decision has been conferred on Ministers confirms that this is a high-level decision with significant policy content. That is also apparent from the language and content of the factors that must be considered, many of which require a high degree of evaluative judgement, and are not capable of quantification or calculation.
5. In applying the benefit to New Zealand criteria, Ministers are required to consider each of the factors in section 17(2), determine which of the factors are relevant to the investment, and have regard to the relevant section 17(2) factors. The relative importance to be given to each factor is a matter to be determined by Ministers. In particular, the Act does not require economic factors to be given more weight than non-economic factors, or vice versa. It is a matter for you, in carrying out your overall evaluation, to decide what weight to give to each factor.
6. The decision concerning whether the benefit to New Zealand, or any part of it or group of New Zealanders, is substantial and identifiable under section 16(1)(e)(iii), involves a collective assessment of the relevant factors.

Justice Miller’s “with and without test”

Economic factors

7. The High Court in *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 (“*Tiroa E*”) requires the “economic benefit” factors in section 17(2)(a) to be assessed on the basis of a “counterfactual test”. That is, Ministers must consider with respect to each section 17(2)(a) factor whether the overseas investment is likely to result in a benefit to New Zealand over and above any benefit that will or is likely to result even if the investment does not proceed. It is only the additional benefit from the overseas investment that is relevant when applying the “benefit to New Zealand” criteria.

Non- economic factors

8. Although the position is not free from doubt, the better view is that the same question – will this benefit be achieved even if the overseas investment does not occur – should be asked in relation to the other “non-economic” factors listed in section 17(2)(b)-(e). The High Court judgment suggested³ that there could be a benefit in respect of the non-economic factors even if the same benefit would be achieved in the absence of the investment. But as the Court noted⁴, it is not easy to see how a benefit that will happen anyway could be regarded as substantial for the purposes of section 16(1)(e)(iii). We consider that Ministers should not treat benefits that are likely to be achieved in any event as contributing to the “substantial and identifiable benefit” criterion.

Regulation 28 factors

9. With regard to the factors in regulation 28 of the Overseas Investment Regulations 2005, Miller J noted that:

The criteria listed in reg 28 deal, for the most part, with benefits that only an overseas buyer could provide or what may be loosely described as strategic considerations, so they do not require a counterfactual analysis.⁵

10. Many of the factors in regulation 28 are incapable of having a counterfactual analysis applied to them. However, as recognised by Miller J, there are some factors that may require a counterfactual analysis. The Overseas Investment Office has applied a counterfactual analysis where appropriate.

“Rural Land” Directive

11. The overseas investment involves the acquisition of ‘rural land’ being land that is non-urban and over 5 hectares in size (excluding any associated land). Therefore, in accordance with directions from Ministers and for the reasons set out in paragraph 24 of the report, we have treated the following factors as being of high relative importance:⁶
- (a) the “jobs” factor (section 17(2)(a)(i));
 - (b) the “new technology or business skills” factor (section 17(2)(a)(ii));
 - (c) the “increased exports receipts” factor (section 17(2)(a)(iii));
 - (d) the “increased processing of primary products” factor (section 17(2)(a)(vi)); and
 - (e) the “oversight and participation by New Zealanders” factor (regulation 28(j)).

Conditions

12. Conditions may be imposed on any consent that is granted, under section 25. The attached Report recommends some conditions that Ministers may wish to consider imposing in this case.
13. If you wish to make any changes to the conditions of consent, those changes should be discussed with the Overseas Investment Office, and the other Minister, before being finalised.

³ *Tiroa E* at [36].

⁴ *Tiroa E* at [38].

⁵ *Tiroa E* at [36].

⁶ Ministerial Directive letter date 28 November 2017, paras 13-17.

Decision

14. The decision that you are required to make should be based on information available to you that you consider is sufficiently reliable for that purpose. The information that the Overseas Investment Office has taken into account in making its recommendation is summarised in the attached Report.
15. If you propose to disagree with the decision of the other Minister, you should discuss your proposed decision with the Overseas Investment Office and the other Minister.
16. If required, staff from the Overseas Investment Office are available to brief you on the Office's recommendations.

RELEASED UNDER THE
L INFORMATION ACT

Appendix 3 - Sensitive Land

1. 1232A State Highway 1, Wellsford - Springfield Estate

Land Interest	Freehold Interest (approximately 363.5567 hectares)
CTs	252010, 278282, 393450, NA138D/56, NA42B/697, NA42B/698, NA42B/699, NA781/62, NA939/169, NA939/170 (North Auckland)
Sensitivity	Is more than 5 hectares of non-urban land
	Adjoins land that is over 0.4 hectares and is a scientific, scenic, historic, or nature reserve under the Reserves Act 1977 that is administered by the Department of Conservation
	Adjoins land that is over 0.4 hectares and is listed, or in a class listed, as a reserve, a public park, or other sensitive area by the regulator under s37

2. Matariki Forests

Land Interest	Freehold Interest (approximately 656.5127 hectares)
CTs	NA1149/47, NA1149/48, NA136/300, NA1937/63, NA26C/477, NA279/207, NA28A/580, NA2D/102, NA31B/790, NA50B/713, NA599/296, NA599/297, NA599/299, NA634/125, NA643/294, NA761/222, NA870/214, NA907/217, NA27D/570 (North Auckland)
Sensitivity	Is more than 5 hectares of non-urban land
	Includes land that a district plan or proposed district plan under the Resource Management Act 1991 provides is to be used as a reserve, as a public park, for recreation purposes, or as open space
	Adjoins land that is over 0.4 hectares and is a scientific, scenic, historic, or nature reserve under the Reserves Act 1977 that is administered by the Department of Conservation
	Adjoins land that is over 0.4 hectares and is listed, or in a class listed, as a reserve, a public park, or other sensitive area by the regulator under s37

Appendix 4 - Good Character

Introduction

1. As part of the application (**Application**) and our standard open-source checks, several matters were discovered about the Applicant and one of the individuals with control in their capacity as directors of Guangyuan First Water Company. We have made enquiries about the relevant matters and sought and received comment from the Applicant.
2. The purpose of this Appendix is to outline the relevant matters, the Applicant's comments on these and our assessment of the good character criterion as it applies to the Application (section section 16(1)(c) of the Act).
3. For the purpose of this Application, the individuals with control of the relevant overseas person are set out in the report. We have assessed each of the allegations and consider that, for the reasons set out below, the allegations do not prevent a finding that the individuals with control of the relevant overseas person are of good character.

Good character criterion

4. Section section 16(1)(c) of the Act requires that Ministers be satisfied that the relevant overseas person or, (if that person is not an individual) all the individuals with control of the relevant overseas persons are of good character.
5. The term "good character" is not defined in the Act. The majority of the Select Committee reporting back on the Bill in 2005 confirmed that the "good character" test was needed as it is important to ensure that all persons investing in New Zealand are people unlikely to act inappropriately and bring New Zealand into disrepute.
6. When undertaking the good character assessment, Ministers must be satisfied that the character of all the individuals with control of the relevant overseas person is sufficient so that they should be granted the privilege of owning or controlling sensitive New Zealand assets.
7. Section 19(1) of the Act states that the following factors must be taken into account (without limitation) in assessing whether or not a person is of good character:
 - (a) offences or contraventions of the law by the person, or by any person in which the individual has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
 - (b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.
8. All relevant matters must be weighted up before making a decision that an individual is of good character. If the decision-maker wishes to rely on a matter to which the applicant has not had an opportunity to respond, then such an opportunity to respond needs to be given to the applicant.
9. How much weight should be given to a particular matter depends on a number of factors, including how closely linked the particular matter is with the investment being made. While submissions on weighting given by the relevant overseas person or individual with control may be considered, the ultimate decision as to the weighting to be given to relevant matters is for the decision-makers.
10. Matters which might be relevant include:
 - (a) Credible allegations of offending or contraventions of the law (assessing whether the allegation is sufficiently linked to an individual with control or relevant overseas person);

- (b) Investigations, prosecutions or other enforcement action by regulatory or professional bodies;
 - (c) Track record in New Zealand.
11. Matters which are unlikely to be relevant include:
- (a) Adverse information that does not relate to an individual with control (for example, offences or contraventions by a relevant overseas person which occurred before the particular individual became involved with the relevant overseas person);
 - (b) Where the decision maker is satisfied that allegations about a relevant overseas person or individual with control have been fully investigated by the relevant regulatory or other authority and the person or individual has been cleared of any wrongdoing;
 - (c) Adverse information that does not impact on the character of a relevant overseas person or individual with control.
12. The good character test is applicable to individuals, not entities such as body corporates. However, where the investment is to be carried out by a body corporate, the character of the relevant individuals who control the body corporate will need to be considered. Where an offence or contravention is committed by a person to which an individual had a 25% or more ownership or control interest, this is a mandatory consideration. Where the individual's interest in the person is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.
13. The onus is on the applicants to satisfy the decision maker that all the individuals with control are of good character.
14. If the decision maker has doubts about the character of an individual with control which result in it not being satisfied that the test for good character has been met, then the application for consent must be declined.

Applicability of good character criterion to New Zealanders

15. Thomas Harvey Nickels and Hans Evan Geoffrey Maehl are New Zealand citizens, however we note that all of the individuals with control of the relevant overseas person are required to be of good character.

Good character allegations

16. Two good character allegations were found by the OIO as a result of our standard open-source checks being an allegation relating to mixing recycling material and a character allegation relating to Henjie Zhang.

Mixing recycled materials

17. It was reported in March 2017 that the Applicant had been accused of mixing separated recycling matter contrary to Marlborough District Council recycling rules which may have resulted in recyclable products being sent to landfill instead of recycling facilities.

Applicant's submissions

18. The Applicant has made submissions to explain why this incident occurred referring to the requirement in Marlborough for all glass to be sorted by colour.
19. The Applicant submits that the incident in question occurred as the reported load already had too much contamination to be accepted at the recycling facility and therefore the load was mixed as it could not be saved.

20. The Applicant submits that the glass colour separation required in the Marlborough district often proved problematic with a large proportion of loads being mixed and not sorted correctly.
21. The Applicant notes that any contaminated loads are not accepted by the recycling centre and therefore if a load becomes contaminated mid route it cannot be rectified.

OIO Assessment

22. We are satisfied that the Applicant has undertaken steps to rectify the recycling issue through offering a glass recycling system. We however note that the public's ability to recycle the glass correctly and sort into appropriate colours is outside of the Applicant's ability and scope. With the above in mind, we consider that the allegations do not affect the Applicant or any of the individuals with controls good character for the purpose of this Investment.

Allegation relating to Henjie Zhang

23. Henjie Zhang was a board member of Beijing Capital Company when one of its wholly owned subsidiaries Guangyuan First Water Company LLC was involved in a thallium pollution incident.

Applicant's Submissions

24. The Applicant submits that the pollution occurred as a result of contamination by a third party copper mine. The Applicant further submits Guangyuan First Water Company LLC were instead instrumental in fixing the issue not causing the problem.

OIO Assessment

25. There is no evidence to suggest that Mr Zhang was involved in the alleged pollution and therefore we are satisfied that this disclosure does not affect the good character of the Applicant or any of the individuals with control.

Conclusion

22. For the reasons set out above, we are satisfied that the individuals with control of the relevant overseas person are of good character.
23. Having regard to the above, we are satisfied that the statutory declaration provided by Thomas Harvey Nickels can be relied on. We are accordingly satisfied that the individuals with control are of good character. We note that the conditions proposed in **Appendix 1** include a requirement that the Individuals with Control (as defined in the conditions) continue to be of good character.

Appendix 5 - Third Party Submissions

[s 9(2)(a)]

Summary of Third Party's Comments:

The third party submission is from a private aircraft owner/ operator that has leased space in a hangar on the Springhill Land.

The third party submission notes the following:

"The airfield is a fantastic piece of aviation infrastructure and I believe is the only sealed runway between North Shore and Whangarei. I believe that recent events in Kaikoura have highlighted the importance of preserving such infrastructure and ensuring that it remains for future use when needed

I am not against foreign ownership of properties such as Springhill however I think it is important that the facility is maintained and ideally preserved for use by the aviation community both for recreational use and emergency services."

Summary of Applicant's Comments:

The Applicant notes that the airfield has always been privately owned and has not been a public facility. The Applicant notes that there are a number of other airfields within the North Auckland region.

The Applicant to date has not determined the future use of the airstrip as the primary purpose for the acquisition of the Land is for the development of the landfill.

The Applicant also notes that the usage of the airstrip will largely be dependant on what conditions are required as part of any consents granted under the Resource Management Act.

OIO Assessment:

We consider that the maintenance of the airfield is not a matter that can be considered when determining whether the Investment should be granted consent as it is outside of the scope of the criteria that the decision maker is required to consider.

We also understand that the airfield is currently used for private purposes and is operated by the vendor largely as a hobby. The airfield is also unlikely to be a critical piece of infrastructure for the region.

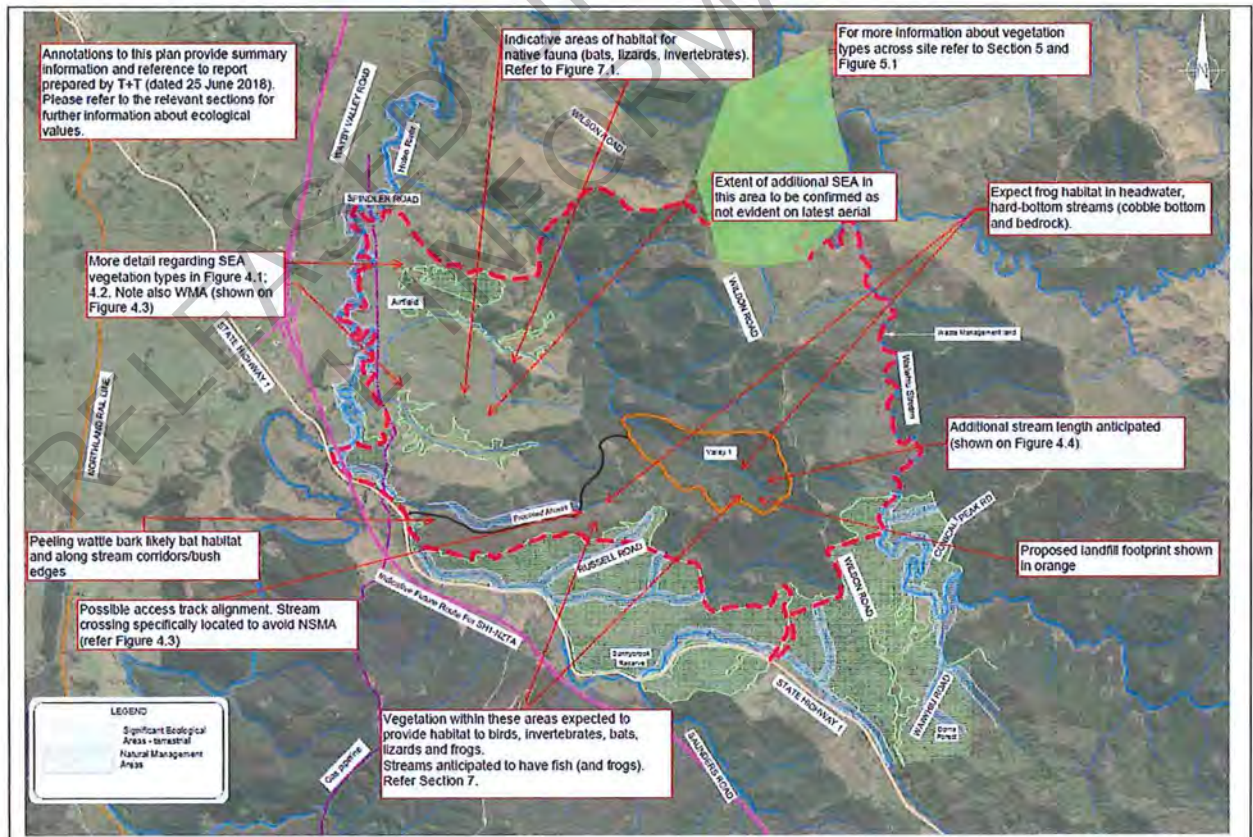
Appendix 6 - Significant flora and fauna on the Land

Consultation undertaken

1. As part of our assessment, we consulted with the Department of Conservation (“DOC”) to ascertain whether there are any areas of ecological significance on the Land.
2. As part of this process, the Applicant commissioned Tonkin + Taylor to provide a report of what is present on the Land. This analysis was only undertaken as a desktop analysis with a more in-depth analysis to be undertaken on the Land as part of resource consent process.
3. The Land contains areas of significant flora and fauna as outlined in the Tonkin + Taylor Ecological report dated June 2018 (“**Tonkin + Taylor Report**”). This report has been provided to DOC who have in turn provided recommendations which are outlined below.

Significant areas identified

4. The Tonkin + Taylor Report states that there are identified areas of significant indigenous vegetation or significant habitats of indigenous fauna located either on the Land or in the freshwater environments on the Land as identified by the Auckland Council.
5. The Tonkin + Taylor Report identified several areas of significance on the Land which are shown in the following graphic:



6. The diverse nature of the Land including forestry, wetlands and farmland provides habitats to a large cross section of flora and fauna some of which has been identified as critically endangered.

7. It is understood from DOC that the fauna present with the greatest significance are the Hochstetter's frogs, Australasian bittern and the New Zealand long-tailed bat.

DOC's recommendations

8. The table below outlines DOC's recommendations for the Land, the Applicant's response and consent condition which we recommend is imposed:

DOC Recommendation	Applicant's response	Recommended Consent Condition
<p>More information is required:</p> <ul style="list-style-type: none"> • The Waste Management NZ's project plan is needed to accurately detail mitigation required. • More intensive surveys for all Significant Natural Areas (SNA's) including Valley 1 and Access valley. • All headwater waterway systems need to be mapped, including ephemeral and intermittent systems. 	<p>The Applicant would agree to an OIO consent condition as follows:</p> <p><i>Prior to lodgement of the resource consent application for the project, Waste Management will provide the following information to interested parties and DOC as part of the RMA consultation process:</i></p> <ul style="list-style-type: none"> • <i>A project plan that accurately details the proposed mitigation required;</i> • <i>An intensive survey for all Significant Natural Areas (SNA's) including Valley 1 and Access valley.</i> • <i>A map of all headwater waterway systems, including ephemeral and intermittent systems.</i> 	<p>You must provide the following information to interested parties including but not limited to DOC and all local mana whenua including Ngati Manuhiri, Ngati Whatua and Ngati Rongo:</p> <p>(a) A project plan that accurately details the proposed use of the Land and the proposed mitigation;</p> <p>(b) An intensive survey to a standard acceptable by DOC of all significant natural areas being areas of significant indigenous vegetation or significant habitats of indigenous fauna ("SNA") on the Land including the site of the proposed Landfill; and</p> <p>(c) A map of all headwater waterways systems including ephemeral and intermittent systems.</p>
<p>The areas have significant biodiversity values which require protection:</p> <ul style="list-style-type: none"> • Full protection of all bush fragments and other SNA's is needed including predator and weed control. These should be fenced to exclude stock. Where these fragments are adjacent wetlands like 2g (on the T&T map supplied) and for those remnants upstream (3h, 3i, 3d, 3e etc) they should be joined. • Exotic species to be 	<p>The project will inevitably affect aspects of aquatic and terrestrial ecology. It is not possible at this time to pre-empt the outcome of the consent process, and the consent authority will ultimately make its own decision on these aspects.</p> <p>All of the matters in the bullet points in Section Two will be thoroughly assessed through the ecological assessment, consent application and submission and hearing process.</p> <p>The Applicant is however willing to offer the following OIO consent condition:</p>	<p>You must offer to protect and covenant ALL SNAs on the Land that are not affected by the Landfill as part of your resource consent application for the Landfill.</p> <p>This includes but is not limited to the areas specified in schedule five of the agreement for sale and purchase for the Matariki Land.</p>

DOC Recommendation	Applicant's response	Recommended Consent Condition
<p>felled & replanted with suitable native species to ensure continuous habitat above the wetland systems.</p> <ul style="list-style-type: none"> All freshwater habitat and stream beds to be protected and including protection from sedimentation and loss of shade. 	<p><i>That, to the extent Waste Management is felling any trees that might provide habitat for or contain long tailed bats, then Waste Management will adopt standard techniques for avoiding or mitigating effects on those bats.</i></p> <p><i>That Waste Management will adopt the best practicable option to avoid sedimentation entering any stream areas in the Springhill area that provide habitat for Hochstetter frogs.</i></p> <p>The remaining matters in section two can be addressed in the following proposed condition:</p> <p><i>Pursuant to the RMA process and in response to the provisions in the RMA (s 6(a) and (c)) and in the Unitary Plan, including those provisions relating to the preservation of the natural character of wetlands and their margins, and the protection of them from inappropriate subdivision use and development, and the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, Waste Management agrees to protect in perpetuity through a covenant a combined area of not less than 40ha of the land within the Matariki Land and the Springhill Land. This 40ha to be covenanted would include any part of the Matariki Land covenanted by Matariki as specified in Schedule 5 to the Matariki Agreement, but in any event whether or not Matariki elects to covenant any part prior to settlement</i></p>	

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DOC Recommendation	Applicant's response	Recommended Consent Condition
	<p><i>of the purchase by the Waste Management, there would be a minimum of 40ha covenanted.</i></p> <p><i>For the avoidance of doubt:</i></p> <ul style="list-style-type: none"> • <i>the identification of those areas being covenanted by Waste Management shall be the subject of prior discussion with the Department of Conservation, however the final area to be covenanted and its location will be determined by the consent authority that issues the resource consents for the project;</i> • <i>the requirement to protect a minimum area of 40 ha shall apply irrespective of whether or not that size of area is required by to be covenanted by the consent authority pursuant to any conditions imposed on the project; and</i> • <i>the area to be covenanted shall include riparian margins, and areas of existing and future developed ecological value.</i> 	
<p>Unimpeded access is needed between Hoteo river and all valley catchments.</p>	<p>The development proposed in the RMA consent application will be in general accordance with the New Zealand Fish Passage Guidelines (2018).</p>	<p>The development of the Landfill must comply with the New Zealand Fish Passage Guidelines (2018).</p>
<p>Protection of species of long tailed bats in wattle and pines needs to be considered before any felling. Any trees detected as having roosts need to be</p>		<p>To the extent you are felling trees on the Land that might provide habitats for or contain long tailed bats, you must adopt reasonable techniques for avoiding or</p>

DOC Recommendation	Applicant's response	Recommended Consent Condition
either protected or felled in a manner that enables the colony to move / survive. (Techniques are well documented and used on other nearby projects).		mitigating effects on the bats.
Hochstetter's frogs are likely to be present in suitable rock forms & cobble in stream beds. There is contiguous 4 & 5 habitat to the south of the Springhill property & the stream bed should be protected, including from exposure to sunlight / heating of the stream beds. Upstream water quality needs to be protected and sedimentation kept out of the streams to enable their survival		You must adopt the best practicable option to avoid sedimentation entering any streams or waterways on the Land that provide habitats for Hochstetter frogs.
Replace the Acacias in 5c and 5b with native vegetation to link with the adjacent scenic reserve, reducing the edge effect on vegetation	The site development proposal does not include replacement of exotic plantation with native species.	No condition appropriate
Landscape scale predator control is needed across the proposed land and the neighbouring reserves – A land fill site is especially likely to enable a large feral cat population to establish and therefore will adversely affect threatened species on neighbouring reserves, which will effect wildlife such as Bittern & fernbird in the wetland areas. The full suite of predators should be controlled and wild animals maintained at zero. (Goats, pigs & feral deer).	Waste Management proposes the following condition: <i>Waste Management will offer, in the resource consent process, an appropriate predator control condition addressing in particular, but not limited to, any emerging feral cat population associated with Waste Management's activities. In addition, Waste Management will securely fence the landfill operational area.</i>	You must offer to undertake predator control as part of the resource consent process including securely fencing the Landfill operational area and adopting mitigating solutions to manage any feral cat population or other wild animals that could threaten the SNA on the Land
Development impacts: The greatest impact of development and earthmoving on the Matariki land is likely to be to	Waste Management will be putting forward a comprehensive ecological mitigation and offset package as part of the consent application	You must offer to adopt best practice (e.g. Auckland Council GD05) to avoid or minimise sedimentation entering any of the waterways on the Land or

DOC Recommendation	Applicant's response	Recommended Consent Condition
<p>overland paths - small waterways, seeps, ephemeral streams and waterways. Hochstetter frogs are likely to be present in suitable habitat in these stream beds. Sediment should be prevented from entering all the streambeds within the Matariki owned land. Where wetlands are present, most likely in the bottom of valleys, these should be targeted for protection</p>	<p>process. That will include matters such as riparian planting, and enhancement of existing or new native vegetation, and any associated fauna management measure.</p> <p>In respect of sedimentation, Waste Management proposes the following condition:</p> <p><i>Waste Management will offer, in the resource consent process, insofar as it relates to Waste Management's operations, and adopt best practice (eg Auckland Council GD05), to avoid or minimise sedimentation entering any of the waterways on or adjacent to the operational site.</i></p>	<p>adjacent to the Landfill as part of your resource consent application for the Landfill.</p>
<p>As exotic trees are felled / removed, riparian planting should be undertaken along the waterways to better protect downstream values, including off site. Long tailed Bats, Peripatus, Kauri snail, Pateke are likely to be present.</p>	<p>Harvesting of exotic trees will be in accordance with the New Zealand Forest Owners' Association Inc. Environmental Code of Practice for Plantation Forestry (2007) which includes care for waterways.</p>	
<ul style="list-style-type: none"> The Hoteo River abuts this property. It is the longest river in the Auckland Region and has recognised ecological, cultural and historic values. Detrimental impacts to the water quality & flows should be avoided. Additional riparian planting and stock exclusion, combined with predator control off site may also be considered to mitigate adverse effects this proposal may have. 	<p>Waste Management confirms that no works are proposed on or adjacent to the Hoteo River where it abuts the Springhill property. Detailed consent conditions will be offered through the RMA consent process in order to avoid, remedy or mitigate any potential effects on water quality and flows within the surrounding tributaries of the Hoteo River. The proposed mitigation to be offered through the consent process could, if suitable sites are found, include some riparian planting/stock exclusion along part of this</p>	<p>You must consult with DOC to determine what you can reasonably do to riparian plant and/ fence for the purpose of stock exclusion along the Hoteo river.</p> <p>You must implement DOC's recommendations in this regard.</p>

DOC Recommendation	Applicant's response	Recommended Consent Condition
All mana whenua to be consulted at this OIO stage.	<p>river.</p> <p>Due to the confidentiality reasons set out in the OIO application, Waste Management has not been able to consult widely with stakeholders during the OIO process. However, Waste Management has already initiated the consultation process by way of letter of introduction to local iwi (Ngati Manuhiri, Ngati Whatua and Ngati Rongo) and WM would further agree to the following condition:</p> <p><i>Prior to lodging resource consent application, Waste Management will consult fully with mana whenua with interests in and adjacent to the project site.</i></p>	You must consult fully with all mana whenua with interests in and/or adjacent to the Land.

9. Where the conditions refer to standard techniques or guidelines, the Applicant has provided further details as what these involve.
10. We consider that the recommended conditions of consent ensure that there will be adequate mechanisms for protecting any areas of significant indigenous vegetation or significant habitats of indigenous fauna on the Land to the extent it is not affected by the position of the Landfill. The protections will largely occur through the Applicant offering to covenant areas or undertake certain actions as a condition of any resource consent that is imposed. Some of the protections are contingent on the local authority accepting the Applicant's offer to undertake the protection mechanisms.

Additional comments from DOC

11. For completeness we note that DOC provided the following additional comment with its indigenous fauna and flora recommendations:

The recommendation from our Auckland staff is that this application should be declined. This application has been looked at by the DOC Auckland Operations Manager and the Acting Auckland Regional Operations Director and technical staff.

One must question the suitability of this site as a landfill knowing the likely impacts on flora and fauna, some of which are endangered.

As previously advised, should this purchase be completed, DOC are likely to also be involved in future RMA processes and Wildlife Act consents. Our comments here in no way bind DOC to a future position on this proposal.
12. We consider the relevance of this comment below.
13. The application for consent must be considered with regard to the criteria in the Overseas Investment Act 2005. Section 14 requires a decision maker to grant consent if it is satisfied that all of the criteria for consent have been met and not grant consent if they are not satisfied.

14. The comment by DOC is only relevant to the extent it relates to the criteria that Ministers must consider when assessing an application for consent.
15. One of the criteria for consent (in section 16(1)(e)(ii) and (iii)) is whether the investment is likely to substantially and identifiably benefit New Zealand, as determined by relevant Ministers with regard to the factors in section 17. One of the factors in section 17 relates to whether there will be adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats of indigenous fauna.
16. DOC's recommendations are relevant to this factor and have been considered in our assessment of this factor which is set out in paragraphs 127 to 132 of the Report and in this Appendix.
17. The suitability of the Land for a landfill will be considered as part of the application for resource consent. During the consideration of the resource consent application, we understand that DOC intends to make a submission (as a neighbouring land owner) setting out its views on the proposed use of the land as a landfill.
18. The resource consent process is relevant to the extent that it relates to the likelihood of the Applicant being able to undertake its proposed investment plan and therefore the likelihood of the benefits occurring. The likelihood of obtaining resource consent is discussed further in paragraphs 69 to 77.
19. We do not consider that the comment by DOC is relevant to the other criteria for consent. We have set out our full assessment of this application with regard to the criteria for consent in the body of this report.

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Appendix 7 - Jobs

Typical Landfill Staffing based on Redvale Landfill staff as at July 2018.

Annual (2026 - 2055)				
Position	No. of Staff	Typical Contracted Minimum weekly Hours per person	Combined Contracted Minimum Weekly Hours	Annualised Combined Salary (x 1000)
Management	[s 9(2)(b) (ii)]	[s 9(2)(b)(ii)]		
Manager and Operations Managers				
Administration				
Weighbridge Operators and Supervisor				
Financial Controller, Accountant and Assistant Accountant				
Sales Specialists				
Reception				
Workface				
Team Leader				
Operators				
Labourers				
Workshop				
Workshop Mech / Leading Hand				
Gas and Leachate (phased over first 10 years)				
Gas Field Technicians				
Gas Generation Technicians				
Compliance				
Laboratory Technician and assistants				
Monitoring and Compliance				
	45		1,918	\$3,190

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